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In the Supreme Court of the United States

OCTOBER TERM, 1976

76-1607

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

SAMUEL H. SLOAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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v.

SAMUEL H. SLOAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

The Solicitor General, on behalf of the Securities and Exchange Commission, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit in this case.

OPINION BELOW

The opinion of the court of appeals (App. B, *infra*, pp. 3a-17a), as modified (App. C, *infra*, pp. 18a-20a), is reported at 547 F. 2d 152.

JURISDICTION

The judgment of the court of appeals was entered on November 18, 1976 (App. A, *infra*, p. 1a). A timely petition for rehearing was denied by the original panel on December 27, 1976 (App. C, *infra*, p. 18a), and the contemporaneous suggestion for rehearing *en banc* was rejected on January 24, 1977 (App. F, *infra*, p. 27a). On March 17, 1977, Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to and including April 25, 1977, and on April 22, 1977, he granted a further extension to and including May 15, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the Commission's authority under Section 12(k) of the Securities Exchange Act of 1934 summarily to suspend trading in a security "for a period not exceeding ten days" may be exercised at the expiration of an earlier ten-day suspension ordered pursuant to the same statute.

2. Whether a suit to review the propriety of consecutive suspension orders becomes moot once trading in the particular security is permitted to resume, in the absence of any showing that the party seeking review is likely to be affected by consecutive suspension orders in the future.

STATUTES INVOLVED

Sections 12(j) and 12(k) of the Securities Exchange Act, Pub. L. 94-29, 89 Stat. 118, 15 U.S.C. (Supp. V) 78*l*(j) and 78*l*(k), former Section 15(c)(5) of the Act, 78 Stat. 574, 15 U.S.C. (1970 ed.) 78*o*(c)(5), and former Section 19(a)(4) of the Act, 48 Stat. 898, 15 U.S.C. (1970 ed.) 78s(a)(4), are set forth at App. G, *infra*, pp. 28a-29a.

STATEMENT

On April 29, 1975, the Securities and Exchange Commission issued an order, pursuant to former Sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act, 15 U.S.C. (1970 ed.) 78*o*(c)(5) and 78s(a)(4), suspending public trading in the common stock of Canadian Javelin, Ltd. ("CJL") for ten days, because the Royal Canadian Mounted Police had commenced an extensive investigation into alleged manipulation of CJL common stock on the American Stock Exchange and several Canadian stock exchanges (C.A. App. A-11, A-12).[1] At the same time, the Commission, acting under Section 21(a) of the Securities Exchange Act, 15 U.S.C. 78u(a), commenced its own investigation into allegations of manipulative activities by CJL insiders. During the course of the latter investigation, the Commission made a series of separate determinations suspending trading in the stock for successive ten-day periods. The trading suspen-

[1] "C.A. App." refers to the appendix in the court of appeals.

sion was lifted in May 1976, when the Commission's investigation had resulted in the filing of a civil action, *Securities and Exchange Commission* v. *Doyle, et al.*, Civ. Action No. 76-1882 (S.D.N.Y.).

The Commission earlier, by successive orders, had suspended trading in CJL stock, from November 29, 1973, through January 26, 1975, because of false and misleading press releases. See Securities Exchange Act Release No. 11,172 (1975). Respondent Samuel H. Sloan owned 13 shares of CJL common stock. He had filed a petition in the United States Court of Appeals for the Second Circuit for review of those suspension orders (App. B, *infra*, p. 8a). When trading in CJL stock again was suspended in April 1975, respondent amended his petition to challenge those orders as well. The court of appeals indicated that the tacking of successive suspension orders might raise a substantial question, but it concluded that the record was inadequate and therefore dismissed respondent's claim on this issue without prejudice. *Sloan* v. *Securities and Exchange Commission*, 527 F. 2d 11, 12 (C.A. 2).

The Commission subsequently rejected respondent's request that it refrain from renewing the then current suspension and that it declare the past suspension orders illegal (App. D, *infra*, p. 21a). The Commission noted, among other things, that it was "actively investigating * * * possible manipulation of [CJL] stock in the United States securities markets" and that a criminal information had been returned in Canada indicating that CJL common stock "may

have been artificially manipulated on two Canadian stock exchanges * * *" (App. D, *infra*, p. 22a).

Respondent again petitioned for review, and the court of appeals reversed and directed the Commission "to discontinue forthwith its adoption and use of successive ten-day suspension orders * * *" (App. B, *infra*, p. 17a). The court of appeals held that the wording of Section 12(k) of the Act,[2] authorizing suspension "for a period not exceeding ten days" does not authorize consecutive suspensions. The court rejected the Commission's contentions that Congress had acquiesced in the practice of consecutive suspensions and that the case had become moot when suspension of trading in CJL stock was lifted in May 1976.[3]

REASONS FOR GRANTING REVIEW

The decision below, by holding that the Commission has no statutory authority to issue consecutive suspension orders, eviscerates one of the principal tools available to the Commission for protecting the investing public against suspected fraud or manipulation of the market for particular securities.[4] The

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[2] Section 12(k) of the Act, 15 U.S.C. (Supp. V) 78*l*(k), is the successor to former Sections 15(c)(5) and 19(a)(4). See p. 6, *infra*.

[3] The court of appeals, in denying rehearing, modified its opinion in a manner not pertinent here (App. C, *infra*, pp. 18a-20a).

[4] For a general discussion of the Commission's suspension power, see Goldman & Magrino, *Suspension of Trading in Securities: Some Observations on Section 15(c)(5) of the Securities Exchange Act of 1934*, 15 N.Y.L. Forum 633 (1969).

court of appeals has overturned 33 years of consistent administrative practice, a practice in which Congress had expressly acquiesced. The court did so, moreover, in a case that was moot under the standards this Court has applied in the past.

There is no conflict among the courts of appeals on the statutory question presented here. But in view of the administrative importance of the issue and the fact that the Second Circuit encompasses the Nation's financial center, where the issue is most likely to arise, this case presents "an important question of federal law which has not been, but should be, settled by this court." Rule 19(1)(b) of the Rules of this Court.

1. Former Section 19(a)(4) of the Securities Exchange Act of 1934 granted the Commission authority summarily to suspend trading in securities listed on national exchanges. This authority was extended to over-the-counter securities in 1964 by the enactment of former Section 15(c)(5) of the Act. In 1975, these two provisions were consolidated in present Section 12(k) of the Act, which authorizes the Commission summarily to suspend trading "for a period not exceeding ten days."

Pursuant to this authority, the Commission in the past has found it necessary, for the protection of the investing public, to suspend trading in at least five different kinds of situations. As Professor Loss describes (V Loss, *Securities Regulation* 2816-2822 (1969 Supp.)):

> (1) There have been a few cases of what might be called the "crisis" type * * * [as, for for example, where] [t]he president resigned when it became known that he had withdrawn funds from the company. * * *
>
> (2) * * * [T]here is a group of cases in which the suspension was designed to prevent trading until the Commission might obtain appropriate injunctive relief, usually against fraud or manipulation or an unregistered distribution * * *. * * *
>
> (3) Most of the cases have involved simply a severe inadequacy of (or sometimes misleading) financial information. * * *
>
> (4) In all the cases in the last category * * * the Commission ultimately permitted trading to resume. There is another group of about the same size in which the Commission instituted a delisting proceeding contemporaneously with or shortly after its first suspension order, which was based similarly on a severe inadequacy of financial information, so that in most cases trading, at least on an exchange, never did resume. * * *
>
> (5) * * * [When] the market ha[s] been strongly influenced by news or rumors of doubtful accuracy * * *.

Adequate protection of the investing public in such circumstances often requires successive suspension orders that have the effect of suspending trading for a continuous period in excess of ten days. This was the case, for example, with the Commission's first use of its summary suspension power. *Elastic Stop*

Nut Corp. of America, Securities Exchange Act Release No. 3626 (1944). Before the extension of the Commission's summary suspension power to over-the-counter securities in 1964, the Commission had exercised that power with respect to 30 securities; only in one case was trading permitted to resume upon expiration of the first ten-day suspension. See Goldman and Magrino, *supra*, at 658-662; II Loss, *supra*, at 852-854 (2d ed. 1961). Professor Loss had noted with respect to those suspensions (*id.* at 854):

> Although the suspension power * * * is limited to ten days, the Commission followed the policy in these cases of entering a series of orders until it was able to issue a release stating the essential facts. And * * * it timed the lifting of its suspension so that the public would have some opportunity to be informed of those facts before the resumption of exchange trading. Presumably a single ten-day suspension order does not exhaust the Commission's power * * * if it makes a new determination every ten days of the necessity of continuing the suspension * * *.

Congress recognized and accepted this practice when it extended the Commission's summary suspension power to over-the-counter securities. The Senate Committee on Banking and Currency observed (S. Rep. No. 379, 88th Cong., 1st Sess. 66-67 (1963)):

> The Commission has consistently construed section 19(a)(4) as permitting it to issue more than one suspension if, upon reexamination at the end of the 10-day period, it determines that another suspension is necessary. The committee accepts this interpretation.

Similarly, the House Committee on Interstate and Foreign Commerce agreed to the extension of the suspension power to over-the-counter securities (H.R. Rep. No. 1418, 88th Cong., 2d Sess. 24 (1964)) after it had been advised by the Commission that the Commission's practice was to issue consecutive suspension orders "when upon reexamination at the end of the 10-day period, it has determined that another suspension is necessary" and that "[t]he Commission would follow that policy in administering the proposed new [authority]." Hearings on Investor Protection before the Subcommittee of the House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. 219 (1963).

Between 1964 and November 1976, the suspension power was used with respect to 941 securities and in 235 of these cases consecutive orders were issued resulting in the suspension of trading for more than ten consecutive days.[8]

The Commission's consistent construction of its own statutory authority is entitled to judicial deference. See, *e.g.*, *Red Lion Broadcasting Co.* v. *Federal Communications Commission*, 395 U.S. 367, 381; *Udall* v. *Tallman*, 380 U.S. 1, 16. Where Congress has reenacted or amended a statute without disapproving

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[8] This information was derived by the Commission from a review of its records.

the agency's construction, Congress may appropriately be considered to have approved that construction as correct. See, *e.g.*, *United States* v. *Correll*, 389 U.S. 299, 305-306; *Fribourg Navigation Co.* v. *Commissioner*, 383 U.S. 272, 283; *Costanzo* v. *Tillinghast*, 287 U.S. 341, 345. This general doctrine has even greater force, moreover, where, as here, the pertinent Senate Committee explicitly endorsed the agency's construction.

In these circumstances, the court of appeals should not have rejected the Commission's reading of its statutory powers. The court did so largely on the basis of its view that Section 12(j) of the Act, which permits the Commission to suspend the registration of a security for up to twelve months upon a finding, after notice and hearing, "that the issuer of such security has failed to comply with any provision of this title," obviates the need for consecutive suspensions under Section 12(k). But section 12(j) does not displace Section 12(k): the former provision may be invoked only where there is misconduct by the issuer, whereas the latter more broadly protects against, *inter alia*, manipulation by third parties, corporate crises, or other events that interfere with the market for a particular security. Moreover, even where issuer misconduct threatens to disrupt the market, summary suspension of trading under Section 12(k) may usefully complement the Section 12(j) authority as a means of ensuring the protection of investors while the process of notice and hearing

goes forward under the latter provision.[6] Accordingly, the court erred in holding that consecutive ten-day suspensions are not permitted under the Act.

2. The court of appeals also erred in not dismissing respondent's petition as moot. The suspension of trading in CJL stock had been terminated in May 1976, prior to argument below and more than five months before the decision in this case. The court nevertheless concluded that the case was not moot, reasoning that "[b]ecause of the [Commission's] continuing policy of roll-over ten-day suspension orders, the harm to [respondent] was 'capable of repetition yet evading review'" (App. B, *infra*, p. 16a). But as this Court explained in *Weinstein* v. *Bradford*, 423 U.S. 147, 149, "*Sosna* [v. *Iowa*, 419 U.S. 393,] decided that in the absence of a class action, the 'capable of repetition, yet evading review' doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable

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[6] Suspension of trading under Section 12(k), rather than under Section 12(j), does not deprive persons adversely affected by consecutive suspensions of an opportunity to be heard. Pursuant to Securities Exchange Act Release No. 12361 (1976), persons claiming to be adversely affected by a summary suspension may petition the Commission not to renew the suspension, "and if upon examination of the petition the Commission is of the opinion that there is a genuine issue as to any material fact, the Commission will provide an opportunity for prompt presentation of all material facts" (App. E, *infra*, p. 25a).

expectation that the same complaining party would be subjected to the same action again." *Cf. Securities and Exchange Commission* v. *Medical Committee for Human Rights*, 404 U.S. 403. This is not a class action, and respondent has not shown that he is likely to be adversely affected by consecutive suspension orders in the future.[7] Accordingly, respondent's case is moot and should not have been decided on the merits.[8] Cf. *Securities and Exchange Commission* v. *Lea Fabrics, Inc.*, 363 U.S. 417.

[7] Trading in CJL stock was permitted to resume once all the facts relating to issuer misconduct had been made public. Since the investing public now has been apprised of the relevant facts, the concealment of which had threatened to disrupt the market in CJL stock, there is no reason to believe that it will be necessary to suspend trading again.

[8] We recognize that the issue of mootness raised here may not warrant this Court's plenary review and that the fact of mootness militates against review of the statutory issue. But the court of appeals' direction to the Commission that it "discontinue forthwith its adoption and use of successive ten-day suspension orders" (App. B, *infra*, p. 17a) has cast a substantial shadow over the Commission's right to exercise its suspension powers. See, *e.g.*, *Buchman* v. *Securities and Exchange Commission*, No. 76-4184, decided April 20, 1977 (C.A. 2) (slip op. 3095 n. 3). In these circumstances, the Court may conclude that the court of appeals' decision should not be allowed to stand and that its holding on the issue of mootness is sufficiently contrary to this Court's recent decisions to warrant summary reversal. Cf. *United States* v. *Munsingwear, Inc.*, 340 U.S. 36.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

HARVEY L. PITT,
General Counsel,

VAN P. CARTER,
Special Counsel,

FREDERICK B. WADE,
Attorney,
Securities and Exchange Commission.

MAY 1977.

APPENDIX A

UNITED STATES COURT OF APPEALS
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 18th day of November, one thousand nine hundred and seventy-six.

Present: HON. HAROLD R. MEDINA,
HON. ROBERT P. ANDERSON,
HON. MURRAY I. GURFEIN, C.JJ.
Circuit Judges

76-4110

[Filed Nov. 18, 1976]

SAMUEL H. SLOAN, PETITIONER,

v.

SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.

A PETITION FOR REVIEW OF ORDERS OF THE SECURITIES AND EXCHANGE COMMISSION

This cause came on to be heard on the administrative record of the Securities and Exchange Commission and was argued

Upon consideration thereof, it is now hereby ordered, adjudged and decreed that the orders of the Securities and Exchange Commission be and they hereby are affirmed in part and that the petition for review be and it hereby is granted in part in accordance with the opinion of this court.

A. DANIEL FUSARO
Clerk

by: /s/ Vincent A. Carlsin
Chief Deputy Clerk

APPENDIX B

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Nos. 36 and 266—September Term, 1976

(Argued October 13, 1976
Decided November 18, 1976)

Docket Nos. 75-4087 and 76-4110

SAMUEL H. SLOAN d/b/a SAMUEL H. SLOAN & CO.,
PETITIONER,

v.

SECURITIES AND EXCHANGE COMMISSION, RAY GARRETT, JR., PHILIP A. LOOMIS, JR., JOHN R. EVANS, A. A. SOMMER, JR., GEORGE A. FITZSIMMONS, RESPONDENTS.

SAMUEL H. SLOAN, PETITIONER,

v.

SECURITIES & EXCHANGE COMMISSION, RESPONDENT.

Before:

MEDINA, ANDERSON and GURFEIN,
Circuit Judges.

Petitions for review of S.E.C. order revoking broker-dealer registration and barring petitioner from association with any broker or dealer (Case No. 75-4087), and for review of the validity of a series of S.E.C. orders suspending trading in the stock of a certain corporation (Case No. 76-4110). S.E.C. orders affirmed in Case No. 75-4087, and declared invalid, except for the first order, in Case No. 76-4110.

SAMUEL H. SLOAN, *Pro Se*, Bronx, New York.

DAVID FERBER, Solicitor to the Commission and FREDERICK B. WADE, Esq., Securities and Exchange Commission, Washington, D. C., *for Respondents.*

ANDERSON, *Circuit Judge*:

Case No. 75-4087

This is the appellant Samuel H. Sloan's latest maneuver in his long struggle to avoid compliance with the Securities and Exchange Act and disciplinary measures brought by the S.E.C.[1] He is now seeking a review of the order of the Commission, dated April 28, 1975, revoking the broker-dealer registration of

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[1] A history of Sloan's litigation with the S.E.C. is set out in this court's opinions in *Sloan* v. *SEC*, *slip op.* 2377, 2379, and nn. 2, 3 (2d Cir. March 4, 1976), and *SEC* v. *Sloan*, *slip op.* 3655, 3656 (2d Cir. May 10, 1976).

Samuel H. Sloan d/b/a Samuel H. Sloan & Co., and barring him from associating with any broker or dealer.

He argues, *inter alia*, that his constitutional rights were violated when the SEC refused to let him withdraw his broker-dealer registration as Sloan & Co., which he attempted to do as soon as the SEC took the first steps to revoke the license. As authority for his right to do this he cites *Jones* v. *SEC*, 298 U.S. 1 (1936). But that case dealt with the withdrawal as a matter of right, under the Securities Act of 1933, of a *registration statement* concerning *securities*. It had nothing whatever to do with a broker-dealer licensing registration.

The petitioner declares that § 15(b) of the Securities Exchange Act of 1934 is a criminal statute, which makes broker-dealers inherently suspect with respect to criminal activities. He, therefore, asserts that a statutory or regulatory provision which requires them to furnish information about activities which have been made criminal under some provision of the Act, in effect, compels them to testify against themselves. He equates his own case with *Leary* v. *United States*, 395 U.S. 6 (1969), and *Marchetti* v. *United States*, 390 U.S. 39, 47 (1968), where respectively (a) disclosure of possession of marihuana or (b) wagering activities for tax purposes exposed the taxpayer to prosecution under state and federal laws. The argument, of course, has no bearing on the present case because the applicable statute with which the case is concerned is not criminal but clearly

regulatory in nature. The Supreme Court carefully pointed up this distinction in *Albertson* v. *Subversive Activities Control Board*, 382 U.S. 70, 79 (1965).

The petitioner also complains that his Fifth Amendment right to notice and a hearing and his Sixth Amendment right to be informed of the nature of the charges against him were violated. It appears from the record that the proceedings by the SEC against Sloan were commenced on April 25, 1972 by mailing to Sloan a three page order for public proceedings. Petitioner does not claim that he did not receive them, and he in fact appeared through his counsel. Although he received notice, he goes on to complain that the order did not give him a sufficiently full or definite statement of the "nature and the cause of the accusations against him." An examination of the Order for Public Proceedings, however, discloses that the allegations against Sloan were made with great particularity and in detail so that he was fully apprised of the claims made against him; he knew what the nature of the charges was, against which he had to defend himself.

He complains that the order was not signed or verified in accordance with Rule 11, C.R.F.P. and asserts that the S.E.C. was required to have specially pleaded allegations of fraud. But administrative proceedings are not bound to follow the Federal Rules of Civil Procedure.

Among other things the petitioner challenges the constitutionality of the Act itself, as he has done on numerous occasions in other actions. These former

attacks [1] were characterized by this court as "frivolous," and we are of the opinion that the present claims are equally so.

The remaining points sought to be raised by the petitioner have no merit and call for no comment. Moreover, prior to the revocation of Sloan's license by the S.E.C., the United States District Court for the Southern District of New York had issued a preliminary injunction, which it subsequently made permanent, ordering Sloan to discontinue his violations of the S.E.C. rules relating to record keeping and net capital. This court dismissed an appeal from the granting of this injunction. *S.E.C.* v. *Sloan*, 538 F. 2d 313 (2d Cir. 1976). Thereafter the same district court issued another preliminary injunction on January 17, 1975, prohibiting Sloan from submitting quotations of over-the-counter transactions to "the pink sheets." This court dismissed an appeal from this preliminary injunction on January 7, 1976. *S.E.C.* v. *Sloan*, *supra*. Each of these injunctions was in itself a sufficient ground to support the revocation of Sloan's broker-dealer license under § 15(b)5c of the 1934 Act.

The orders of the S.E.C. are affirmed.

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[1] See *Sloan* v. *SEC*, slip op. 2377, 2380 (2d Cir. March 4, 1976).

Case No. 76-4110

In an appeal brought by the petitioner Sloan from a series of ten-day suspension orders imposed by the S.E.C. upon the stock of Canadian Javelin, Ltd. (CJL), a Canadian corporation, in which Sloan had extensive dealings (principally in selling the stock short), this court handed down a decision on October 15, 1975, *Sloan* v. *Securities & Exchange Commission*, 527 F.2d 11 (2 Cir. 1975), *cert. denied* —— U.S. —— (June 14, 1976), in which it stated that the questions raised were frivolous except for the petitioner's allegation that the " 'tacking' of ten-day summary suspension orders by the SEC for an indefinite period constitutes an abuse of that agency's authority and a deprivation of due process. Apparently this question has never been judicially considered and would seem not to be frivolous . . . ." 527 F.2d at 12. The pleadings in the case then on appeal concerned only the first of a series of ten-day suspension orders which ran from November 29, 1973 through January 26, 1975. At the time the appeal was actually heard, however, a second series of ten-day suspension orders was in progress which ran from April 29, 1975 through May 2, 1976. This court was of the opinion that in the absence of any record dealing with this second series of suspensions, it was not in a position to decide whether the second series was based on substantial evidence or if it constituted an abuse of discretion by the S.E.C. Another factor which this court noted was that the ap-

plicable statute had been amended on June 4, 1975 and the relevant sections are now §§ 12(j) and (k) of the 1934 Act, 15 U.S.C. §§ 78*l*(j) and (k).[a] The amended statute applies to that portion of the second series of ten-day suspension orders issued between June 4, 1975 and May 2, 1976.

In the course of its argument before this court on the prior appeal, the S.E.C., though it did not say

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[a] Sections 78*l* (j) and (k) read as follows:

"(j) The Commission is authorized by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

(k) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

that any statute or regulation required it, offered to grant petitioner Sloan "some sort of administrative hearing." The court noted that this would satisfy any possible exhaustion requirement and would at the same time fill out the record which the court found to be "insurmountably sparse." In the light of this development, the court dismissed Sloan's appeal without prejudice to his repleading after an administrative hearing before the SEC from which judicial review might be sought.

This decision was filed on October 15, 1975 and Sloan immediately petitioned the S.E.C. for the promised hearing. The Commission rejected his petition because it was not verified or properly formulated. On March 11, 1976 Sloan filed a new and verified petition to the Commission, demanding the hearing and requesting a declaration that the successive orders of suspension were illegal, that they violated his due process rights and the Securities Exchange Act. The decision of the Commission rejecting Sloan's petition and refusing to give him the above mentioned administrative hearing was handed down on April 21, 1976, long after the effective date of the amended statute and while the second series of ten-day suspension orders was still being issued. Thereafter on April 23, 1976 and during the time the April 21, 1976 suspension order was operating, Sloan brought the present appeal pursuant to § 25 (a) of the 1934 Act, 15 U.S.C. § 78y(a)(1) (as amended, 1975), for review of this second series of suspension orders. He alleges (1) that there was no

rational basis for the trading suspensions and the orders were not supported by substantial evidence; (2) that the suspension orders violated his due process rights because at no time has he been afforded notice and an opportunity for a hearing; (3) that the successive summary suspension orders, the "tacking" of ten-day orders, are unlawful because the statute specifically authorizes summary suspension of trading only "for a period not exceeding ten days"; (4) that § 78*l*(k) is an unconstitutional delegation of Congress' legislative power because a suspension of trading in a security is "legislation"; and (5) that the present proceeding is not moot even though there are no suspension orders now in effect.

With respect to the first of these claims, an examination of the record discloses there was sufficient evidence of probable manipulation of CJL's common stock and of the false and fraudulent representations as to its soundness and value to justify the Commission's conclusion that the public interest and the protection of investors required it summarily to suspend trading "for a period not exceeding ten days" in accordance with both the previous sections, 19(a)(4) and 15(c)(5), as well as the new section 12(k), and the Commission, therefore, suspended trading of the stock for ten days commencing April 29, 1975.

At the end of this first ten-day suspension period, the Commission decided that under the circumstances the suspension order should be continued for an additional ten days. It asserts that it did this on the basis of an independent determination made at the

time that continued suspension was required in the public interest and for the protection of investors. At the end of the second ten-day suspension period, it made a like determination and ordered a further ten-day suspension and then made another determination and order and another and another until the total suspension periods covered a span of 370 days or 37 ten-day suspension periods. In spite of the wording of the statute, both before and after the amendment of 1975, which authorized suspension "for a period not exceeding ten days," the Commission made its own interpretation of the statute through which it claimed to have the power to order any number of ten-day suspension periods which could total many months or even years. It relies in some measure upon legislative history which concerned the earlier act, i.e., Securities & Exchange Act of 1934, § 15(c)(5) and § 19(a)(4), 15 U.S.C. § 78o(c)(5) and § 78s(a)(4), to support the legality of such tacking of ten-day orders. Although a few comments by individual senators and congressmen indicated that they were aware that the S.E.C. was using successive ten-day suspension orders for periods of extended duration, no express statutory authority for this procedure was ever enacted. The Commission further claims that the practice of roll-over ten-day suspension orders, which developed before the 1975 amendment, was carried over to the newly amended law of June 4, 1975, because Senate Report No. 94-75, 94th Cong., 1st Sess. (1975), p. 106, stated that the proposed § 12(k) "would con-

solidate in one place the power the SEC presently has to . . ." issue summary trading suspension orders. We disagree, however, with the Commission's rather free interpretation of the statute and its claims as to the legislative intent.

Section 12(k) of the 1975 amended statute, was a consolidation of the prior sections 15(c)(5) and 19(a)(4). It authorized the SEC to issue summary suspension orders, but it did not empower the Commission to adopt the arbitrary practice of issuing a string of successive ten-day suspension orders such as those promulgated in the present case. More revealing of congressional intent is the paragraph concerning subsection (j) in Senate Report No. 94-75, *supra*, at 105-106, which recites the authority the SEC has "to suspend for a period not exceeding twelve months [n.b. not a summary suspension] . . . after notice and opportunity for hearing . . ." if the Commission finds

> "that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder. It would also make unlawful any trading in any such security by any broker or dealer. *With this change, the Commission is expected to use this section rather than its ten-day suspension power in cases of extended duration.*" (Emphasis added.)

This discussion immediately preceded the summary suspension power granted the Commission in subsection (k) and must be read in conjunction with it in

determining congressional intent. It must also be borne in mind that the amended statute, as did its predecessor, also provides for an additional summary suspension procedure for a period between the "not exceeding ten day" suspension power and the "not exceeding twelve months" suspension power, and that is, in subsection (k) where the Commission is authorized "with the approval of the President, summarily to suspend all trading on a national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding *ninety* days." (Emphasis added.) It is clear that the congressional scheme for empowering the SEC to suspend trading in a stock or stocks for specified periods, authorized summary action for ten days and/or ninety days to meet emergency situations, to protect the public interest and afford protection of investors. For suspensions required for periods in excess of ninety days but not in excess of twelve months, a notice and a hearing prior to suspension are required. It was also clearly a part of the congressional scheme that the power to order ten-day suspensions was not to be used in cases of extended duration, that is to say they should not be used as a substitute for a period between ten and ninety days or for any time in excess of ninety days, such as in the present case where the suspensions ran on for more than a year.

The petitioner also claims that his constitutional rights were violated by the series of suspension orders because he was never afforded notice and an opportunity for a hearing. It is not necessary to

deal with this point as a constitutional violation, however, because the procedures adopted by the SEC plainly transgressed the statutory provisions. For a single ten-day suspension no prior notice or hearing is required because the proceeding is summary in nature and because the emergency aspect of the order, issued to protect the public interest and give protection to investors, makes it necessary. Likewise, a suspension of ninety days or less is a summary proceeding, safeguarded by the prerequisite of presidential approval. The total period of successive suspensions in this case, however, ran for almost eleven months from the effective date of the amended act, June 4, 1975. Certainly the statute contemplates that for so long a period of ordered suspension in trading of a particular stock, a person aggrieved by the order should be afforded notice and a hearing as soon as it appears that the suspension will probably exceed ninety days.

The only remaining point advanced by the petitioner on appeal, which requires some comment, is the issue of mootness raised by the SEC, which asserts that since May 2, 1976, there has been no ten-day suspension order as to trading of CJL stock, that there are no plans on the part of the SEC to consider or to issue one and no real likelihood that one will be issued in the foreseeable future.

The petitioner claims that he has suffered great loss and damage because the suspension orders frustrated his trade in CJL stock, including short sales, and that each succeeding ten-day suspension expired

before he could seek a legal review of the validity of the order.* Because of the SEC's continuing policy of roll-over ten-day suspension orders, the harm to him was "capable of repetition yet evading review." *Southern Pacific Terminal Co.* v. *ICC*, 219 U.S. 498 (1911); *Sosna* v. *Iowa*, 419 U.S. 393 (1975). See also *Weinstein* v. *Bradford*, 423 U.S. 147 (1975).

This petition for review was filed before the expiration of the last ten-day suspension of the second series now before us for consideration. Moreover the petitioner had raised the question before this court in connection with its October 15, 1975 decision and again before the SEC in connection with the present case. We declare that the successive roll-over ten-

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* This court in its October 15, 1975 decision in Sloan's prior case found that the petitioner had standing, as one aggrieved. At the time he filed his petition in that case he was a trade-dealer doing business under the name of Samuel H. Sloan & Co. He dealt in several different corporate stocks, including the common stock of Canadian Javelin, Ltd., a Canadian corporation. As an individual he owned thirteen shares of Javelin common stock. On April 28, 1975 the S.E.C. revoked his registration and license, so that for the remainder of the time within which this case is concerned, Sloan was not licensed to trade.

We are of the opinion that his private ownership of the common shares is sufficient to confer standing on the petitioner to ask for a review in this case under 15 U.S.C. § 78(y) within 60 days of the S.E.C.'s promulgation of its order. *Medical Committee for Human Rights* v. *S.E.C.*, 432 F.2d 659, 667 (D.C. Cir. 1970). The effect of the suspension order on Sloan, an existing shareholder, is equivalent to an injunction preventing him from selling his shares. He, therefore, has standing. We do not pass on whether individual shareholders have standing in other types of SEC proceedings.

day suspension procedure erroneously adopted by the SEC was improperly pursued and was contrary to the statutory provisions for summary suspensions in force April 30, 1975 to May 2, 1976. The issue of statutory construction and interpretation never became moot and has been ruled upon in this review. The SEC is, therefore, directed to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading in a security for an extended period, i.e. in excess of ten days.

It is so ordered.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Nos. 36, 266—September Term, 1976

(Petition Decided December 27, 1976)

Docket Nos. 75-4087, 76-4110

SAMUEL H. SLOAN, PETITIONER,

v.

SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.

Before:

MEDINA, ANDERSON and GURFEIN,
Circuit Judges.

ON REHEARING

PER CURIAM:

The petition in this case by the Securities and Exchange Commission for a rehearing on the decision by this court on November 18, 1976 ". . . insofar as it deals with the Commission's authority to issue successive summary trading suspensions . . ." is denied.

In the course of reviewing the appeal, the briefs of the parties and the opinion and judgment of the court, this court arrived at the conclusion that the portions of the memorandum of decision which discussed the 90-day suspension provision of 15 U.S.C. § 78(k) should be excised from the opinion and revoked as having had no constituent part in the holding in the case.[1] It was included as a part of the

---

[1] The portions of the court's opinion to be excised are: Slip opinion of November 18, 1976, at the bottom of page 563, the sentence commencing with the words, "It must also be borne in mind that . . ." through the next two sentences on page 564 beginning with the words, "It is clear . . ." through the words, ". . . prior to suspension are required." From the following sentence "it was also clearly . . ." delete the word "also"; and in the same sentence excise the clause beginning with the words, ". . ., that is to say . . ." and ending ". . . excess of ninety days."

Also excise the three sentences from and including the second sentence from the bottom of page 564, beginning "Likewise, a suspension" and including the next two sentences through to the end of the paragraph ending at the top of page 565 with the words, ". . . exceeding ninety days."

That portion of the opinion will now read:

> "This discussion immediately preceded the summary suspension power granted the Commission in subsection (k) and must be read in conjunction with it in determining congressional intent. It was clearly a part of the congressional scheme that the power to order ten-day suspensions was not to be used in cases of extended duration, such as in the present case where the suspensions ran on for more than a year.
>
> The petitioner also claims that his constitutional rights were violated by the series of suspension orders because he was never afforded notice and an opportunity for a hearing. It is not necessary to deal with this point as a constitutional violation, however, because the procedures

legislative framework of the Act as it dealt with suspension of trading in securities on a national exchange. It is not necessary to the decision in the case; and, in view of the variety of implications and interpretations which may be and have been made of the 90-day suspension provision, the court has concluded it should best be deleted. The memorandum of decision of November 18, 1976 is therefore amended accordingly.

The judgment of this court is reaffirmed in all other respects.

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adopted by the SEC plainly transgressed the statutory provisions. For a single ten-day suspension no prior notice or hearing is required because the proceeding is summary in nature and because the emergency aspect of the order, issued to protect the public interest and give protection to investors, makes it necessary.

The only remaining point . . ."

APPENDIX D

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

April 21, 1976

IN THE MATTER OF TRADING IN SECURITIES OF
CANADIAN JAVELIN LTD.

Securities Exchange Act of 1934 Section 12(k)

NOTICE OF SUSPENSION OF TRADING

On March 11, 1976, the Commission received a petition from Mr. Samuel H. Sloan seeking review of all of the suspensions of trading in Canadian Javelin Ltd. securities from November 29, 1973, to date. Mr. Sloan asked, among other things, that the Commission refrain from renewing the trading suspension of Canadian Javelin Ltd. and that the Commission declare that the previous trading suspensions were illegal.

Mr. Sloan states that he is the owner of 13 shares of Canadian Javelin Ltd., that in the past he has engaged in substantial purchases and short sales of shares of that stock, particularly during 1973 prior to a suspension of trading beginning on November 29, 1973.

On that date the Commission not only suspended trading of Canadian Javelin common stock, but also instituted a civil injunctive action against it and certain of its principals, charging violations of the registration and antifraud provisions of the Securities Act of 1933; of antifraud provisions of the Securities Exchange Act of 1934, as well as of annual and periodic reporting requirements of that Act. In addition, it was charged that false reports were filed with the Commission by Canadian Javelin Ltd. and that the company had disseminated a series of press releases containing false and misleading information relating to its purported development of Panamanian mineral properties. This resulted in a series of suspensions which concluded on January 26, 1975.

According to criminal informations returned in Canada, it appears that the common stock of Canadian Javelin may have been artificially manipulated on two Canadian stock exchanges, and that this was continuing after January 26, 1975. The Commission is actively investigating, among other things, possible manipulation of the stock in the United States securities markets. The Commission on April 29, 1975, again suspended trading as a result of a lack of information concerning pending investigative action by Canadian regulatory authorities.

In addition, a number of private civil suits are pending in Canada involving a dispute regarding control of the company. A Canadian provincial court recently issued an order installing a new board of directors and this order is now on appeal.

Mr. Sloan pointed out that the most recent annual report issued by by [*sic*] Canadian Javelin Ltd. contains an earnings statement and a balance sheet of Canadian Javelin Ltd., both of which are certified by the accounting firm of Lee & Martin. Since March 31, 1976, however, the company has been delinquent with respect to the filing of its 10-K report.

Mr. Sloan also contends that the trading suspension aids Mr. Doyle to the detriment of United States stockholders and concludes from this "that in all probability Mr. Doyle is bribing a person or persons at the SEC in order to bring about repeated suspensions of Canadian Javelin Ltd." The facts he alleges in no way support this speculation.

Accordingly, it appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Canadian Javelin Ltd. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from April 23, 1976, through May 2, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

APPENDIX E

SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

SECURITIES EXCHANGE ACT
RELEASE NO. 12361

April 22, 1976

SUMMARY SUSPENSIONS

The Securities and Exchange Commission today announced the adoption of procedures by which any person adversely affected by a summary suspension pursuant to Section 12(k) of the Securities Exchange Act may obtain prompt consideration by the Commission of the reasons such person believes the continued suspension is not in the public interest or is not required for the protection of investors. Section 12(k) authorizes the Commission summarily to suspend trading in securities for 10-day periods, if in its opinion the public interest or the protection of investors so requires.

The usual purpose of a suspension is to alert the investing public to the fact that there is insufficient public information about the issuer upon which an informed investment judgment can be made or that the market for the securities may be reacting to manipulative forces or deceptive practices. Consequently the primary issues normally to be considered by the Commission in determining whether or not 10-day suspensions should be instituted or renewed

are whether or not there is sufficient public information upon which to base an informed investment decision or whether the market for the security appears to reflect manipulative or deceptive activities.

If any person adversely affected by such suspension or who would be adversely affected by the renewal of the suspension desires to show that such suspension is not necessary in the public interest or for the protection of investors, he may petition the Commission that it not renew the suspension. Such petition, which may be in the form of a letter or other statement, should set forth with particularity the facts upon which petitioner relies and should be sworn to by the petitioner or an authorized officer of the petitioner.

If the petitioner so requests in the petition, and if upon examination of the petition the Commission is of the opinion that there is a genuine issue as to any material fact, the Commission will provide an opportunity for prompt presentation of all material facts. If no such opportunity is requested in the petition or if in the opinion of the Commission there is no genuine issue as to any material fact, the Commission will determine the issue upon the basis of the information contained in the petition and any other relevant facts known to the Commission.

The Commission will not be disposed to grant any such petition if the petitioner or any one affiliated with the petitioner shall fail to cooperate in supplying relevant information to the Commission or shall

in any way obstruct any inquiry by the Commission into the relevant facts.

By the Commission.

/s/ George Fitzsimmons
GEORGE FITZSIMMONS
Secretary

APPENDIX F

UNITED STATES COURT OF APPEALS SECOND CIRCUIT

At a stated term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the twenty-fourth day of January, one thousand nine hundred and seventy-seven.

Docket No. 75-4087 [*]

SAMUEL H. SLOAN, d/b/a SAMUEL H. SLOAN & COMPANY, PETITIONER,

v.

SECURITIES & EXCHANGE COMMISSION, ET AL., RESPONDENTS.

A petition for rehearing containing a suggestion that the action be reheard en banc having been filed herein by counsel for the respondent (S.E.C.), and no active judge or judge who was a member of the panel having requested that a vote be taken on said suggestion,

Upon consideration thereof, it is

Ordered that said petition be and it hereby is DENIED.

/s/ Irving R. Kaufman
IRVING R. KAUFMAN
Chief Judge

[* No. should be 76-4110]

APPENDIX G

Section 12(j) and (k) of the Securities Exchange Act of 1934, as amended, Pub. L. 94-29, 89 Stat. 118, 15 U.S.C. (Supp. V) 78*l*(j) and (k) provide:

> "(j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence."
>
> "(k) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

Former Section 19(a)(4) of the Securities Exchange Act of 1934, 48 Stat. 898, 15 U.S.C. 78s(a)(4) provided in pertinent part:

> "Section 19.(a). The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors—
>
> • • • • •
>
> (4) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days."

• • • • •

Former Section 15(c)(5) of the Securities Exchange Act of 1934, as amended, 78 Stat. 574, 15 U.S.C. 78*o*(c)(5) provided in pertinent part:

> "(5) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading, otherwise than on a national securities exchange, in any security (other than an exempted security) for a period not exceeding ten days. No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

☆ U. S. GOVERNMENT PRINTING OFFICE: 1977 234870 4

Supreme Court, U.S.
FILED
DEC 13 1977
MICHAEL RODAK, JR., CLERK

APPENDIX

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1607

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

SAMUEL H. SLOAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED MAY 16, 1977
CERTIORARI GRANTED OCTOBER 17, 1977

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RELEVANT DOCKET ENTRIES

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4/23/76	Petition for Review
4/23/76	Order to Show Cause
6/4/76	Documents comprising the record
8/27/76	Motion for Extension of Time to File Answering Brief
9/17/76	Motion to Dismiss the Appeal on Grounds of Mootness
9/23/76	Order Denying Motion for Extension of Time to File Answering Brief

10/12/76	Supplemental Affidavit in Opposition to Motion to Dismiss Appeal as Moot
11/18/76	Judgment
1/31/77	Issued Mandate (Opinion and Judgment filed in 75-4087)

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL H. SLOAN, PETITIONER, v. SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.	No. 76-4110

ATTESTATION

I hereby attest (a) that documents 1, 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43, 45, 47, 49, 51, 53, 55, 57, 59, 61, 63, 65, 67, 69, 71, and 73 attached hereto are true and correct copies of documents reflecting the Commission's actions sought to be reviewed in this proceeding; (b) that documents 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30, 32, 34, 36, 38, 40, 42, 44, 46, 48, 50, 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74 and 76 attached hereto are true and correct copies of those portions of memoranda addressed to the Commission by its staff which set forth the facts which were before the Commission when those actions were taken; * and (c) that document 75 is a true and correct copy of the petitioner's verified petition for review by the Commission of the actions which are the subject of this appeal, together with the petitioner's affidavit

---

* The recommendations of the Commission's staff to the Commission concerning the trading suspension orders sought to be reviewed and certain references to other recommendations or proposed recommendations of the staff to the Commission have been excised. Certain attachments to document 76 have been omitted because they reflect recommendations of the Commission's staff concerning matters other than the trading suspension orders that are the subject of this appeal. In addition, portions of documents 16, 18, 44 and 48 have been excised because they refer to certain sources of information obtained by, or recommendations by, the Royal Canadian Mounted Police; because they contain expressions of opinion by others than the Commission's staff; or because they adversely reflect upon an individual not named in the pending action against officials of Canadian Javelin Ltd. and others, which was filed by the Commission on April 26, 1976. (*Securities and Exchange Commission v. John C. Doyle, et al.*, S.D.N.Y., No. 76-1882).

in support thereof. All of the above documents are described in more detail in the attached list of documents comprising the record.

.....

CHARLES A. MOORE
Records Officer

Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Dated: June 2, 1976

DOCUMENTS COMPRISING THE RECORD

Document No.	*Description*	*Pages*
1	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period April 29, 1975-May 8, 1975, dated April 29, 1975.	1
2	Information Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated May 2, 1975	2
3	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period May 9, 1975-May 18, 1975, dated May 8, 1975	3
4	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated May 6, 1975	4-5
5	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period May 19, 1975-May 28, 1975, dated May 16, 1975	6
6	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated May 12, 1975	7-8
7	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period May 29, 1975-June 7, 1975, dated May 28, 1975	9
8	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated May 23, 1975	10
9	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period June 8, 1975-June 17, 1975, dated June 6, 1975	11
10	Factual portion of Memorandum to the Commission from the Division of En-	12

Document No.	*Description*	*Pages*
	forcement *Re* Canadian Javelin, Ltd., dated May 30, 1975	
11	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period June 18, 1975-June 27, 1975, dated June 17, 1975	13
12	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated June 16, 1975	14
13	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period June 28, 1975-July 7, 1975, dated June 27, 1975	15
14	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated June 24, 1975	16
15	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period July 8, 1975-July 17, 1975, dated July 7, 1975	17
16	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated July 1, 1975	18-19
17	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period July 18, 1975-July 27, 1975, dated July 17, 1975	20
18	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated July 15, 1975	21-22
19	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period July 28, 1975-August 6, 1975, dated July 25, 1975	23
20	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated July 21, 1975	24-25

Document No.	*Description*	*Pages*
21	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period August 7, 1975-August 16, 1975, dated August 6, 1975	26
22	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated August 1, 1975	27-28
23	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period August 17, 1975-August 26, 1975, dated August 15, 1975	29
24	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated August 11, 1975	30-31
25	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period August 27, 1975-September 5, 1975, dated August 26, 1975	32
26	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated August 21, 1975	33-34
27	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period September 6, 1975-September 15, 1975, dated September 5, 1975	35
28	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated September 2, 1975	36-37
29	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period September 16, 1975-September 25, 1975, dated September 15, 1975	38

Document No.	Description	Pages
30	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated September 11, 1975	39-40
31	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period September 26, 1975-October 5, 1975, dated September 25, 1975	41
32	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated September 23, 1975	42-43
33	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period October 6, 1975-October 15, 1975, dated October 3, 1975	44
34	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated October 1, 1975	45-46
35	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period October 16, 1975-October 25, 1975, dated October 15, 1975	47
36	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated October 10, 1975	48-49
37	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period October 26, 1975-November 4, 1975, dated October 24, 1975	50
38	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated October 17, 1975	51-52
39	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period November 5, 1975-November 14, 1975, dated November 4, 1975	53

Document No.	Description	Pages
40	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated October 31, 1975	54-55
41	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period November 15, 1975-November 24, 1975, dated November 14, 1975	56
42	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated November 7, 1975	57-58
43	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period November 25, 1975-December 4, 1975, dated November 24, 1975	59
44	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated November 18, 1975	60-61
45	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period December 5, 1975-December 14, 1975, dated December 4, 1975	62
46	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated November 28, 1975	63-64
47	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period December 15, 1975-December 24, 1975, dated December 12, 1975	65
48	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated December 5, 1975	66-67
49	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd.,	68

Document No.	Description	Pages
	for the period December 25, 1975-January 3, 1976, dated December 24, 1975	
50	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated December 19, 1975	69-70
51	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period January 4, 1976-January 13, 1976, dated January 2, 1976	71
52	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated December 29, 1975	72-73
53	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period January 14, 1976-January 23, 1976, dated January 13, 1976	74
54	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated January 9, 1976	75-76
55	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period January 24, 1976-February 2, 1976, dated January 23, 1976	77
56	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated January 16, 1976	78-79
57	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period February 3, 1976-February 12, 1976, dated February 2, 1976	80
58	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated January 23, 1976	81-82

Document No.	Description	Pages
59	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period February 13, 1976-February 22, 1976, dated February 12, 1976	83
60	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated February 5, 1976	84-85
61	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period February 23, 1976-March 3, 1976, dated February 20, 1976	86
62	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated February 12, 1976	87-88
63	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period March 4, 1976-March 13, 1976, dated March 3, 1976	89
64	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated February 26, 1976	90-91
65	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period March 14, 1976-March 23, 1976, dated March 12, 1976	92
66	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated March 4, 1976	93-94
67	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period March 24, 1976-April 2, 1976, dated March 23, 1976	95
68	Factual portion of Memorandum to the Commission from the Division of En-	96-97

Document No.	*Description*	*Pages*
	forcement *Re* Canadian Javelin, Ltd., dated March 19, 1976	
69	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period April 3, 1976-April 12, 1976, dated April 2, 1976	98
70	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated March 26, 1976	99-100
71	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period April 13, 1976-April 22, 1976, dated April 12, 1976	101
72	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated April 2, 1976	102-103
73	Notice of Suspension of Trading in the Securities of Canadian Javelin, Ltd., for the period April 23, 1976-May 2, 1976, dated April 21, 1976	104-105
74	Factual portion of Memorandum to the Commission from the Division of Enforcement *Re* Canadian Javelin, Ltd., dated April 20, 1976	106-107
75	Mr. Sloan's Verified Petition for Review of all orders of suspension of trading in securities of Canadian Javelin, Ltd., since November 29, 1973 and Affidavit in Support Thereof	108-114
76	Factual portion of Memorandum to the Commission from the Office of the General Counsel *Re* Mr. Sloan's verified petition for review, dated April 9, 1976	115-117

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

APRIL 29, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 19(a)(4) AND 15(c)(5)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from 3:45 P.M. (EDT) on April 29, 1975 through midnight (EDT) on May 8, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

INFORMATIONAL MEMORANDUM

May 2, 1975

TO: The Commission
FROM: Division of Enforcement
SUBJECT: Canadian Javelin Limited
HO-815

On April 29, 1975, • • • the Commission approved a 10 day suspension of trading in the common stock of Canadian Javelin Limited ("Canadian Javelin") and issued an order of investigation concerning allegations of manipulative activities by insiders of Canadian Javelin.

The staff informed the Commission that the Royal Canadian Mounted Police ("RCMP") advised that they are conducting an extensive investigation into what they believe to be a manipulation of Canadian Javelin's common stock on several Canadian stock exchanges as well as the American Stock Exchange. They have also indicated that several United States residents and broker-dealers may also be involved in the manipulation.

The trading suspension was prompted bv the RCMP's having informed us that they were in the process of executing more than 40 search warrants in connection with their investigation of this matter. The suspension was sought pending an announcement by Canadian Javelin concerning the investigation by the Canadian authorities.

DPDoherty, Assistant Director (x 51246)
RGRyan, Branch Chief (x 51469)
JILevine, Special Investigator (x 51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

MAY 8, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 19(a)(4) AND 15(c)(5)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from May 9, 1975 through May 18, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: May 6, 1975

TO : The Commission
FROM : Division of Enforcement
RE :
DATE FILED :
AMENDED :
SUBJECT : Canadian Javelin Limited
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 (see attached memorandum). On May 5, 1975 the staff met with counsel for the company concerning the issuance of a press release relating to the trading suspension and the investigation by the Canadian authorities.

Company counsel has indicated today that they will require additional time in order to obtain approval for their press release. This delay is caused by extensive internal review procedures established in July 1974 as a result of a Commission injunctive action against the company and several of its principals. We anticipate receiving their press release within the next few days.

• • • • •

David P. Doherty, Assistant Director
Robert G. Ryan, Branch Chief (51468)
Jacob I. Levine, Investigator (51468)
Harris S. Ammerman, Attorney (51476)

INFORMATIONAL MEMORANDUM

May 2, 1975

TO: The Commission
FROM: Division of Enforcement
SUBJECT: Canadian Javelin Limited
HO-815

On April 29, 1975, • • • the Commission approved a 10 day suspension of trading in the common stock of Canadian Javelin Limited ("Canadian Javelin") and issued an order of investigation concerning allegations of manipulative activities by insiders of Canadian Javelin.

The staff informed the Commission that the Royal Canadian Mounted Police ("RCMP") advised that they are conducting an extensive investigation into what they believe to be a manipulation of Canadian Javelin's common stock on several Canadian stock exchanges as well as the American Stock Exchange. They have also indicated that several United States residents and broker-dealers may also be involved in the manipulation.

The trading suspension was prompted by the RCMP's having informed us that they were in the process of executing more than 40 search warrants in connection with their investigation of this matter. The suspension was sought pending an announcement by Canadian Javelin concerning the investigation by the Canadian authorities.

DPDoherty, Assistant Director (x 51246)
RGRyan, Branch Chief (x 51469)
JILevine, Special Investigator (x 51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

MAY 16, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 19(a)(4) AND 15(c)(5)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from May 19, 1975 through May 28, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: May 12, 1975

TO : The Commission
FROM : Division of Enforcement
RE :
DATE FILED :
AMENDED :
SUBJECT : Canadian Javelin Limited
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 (see attached memorandum) and will subsequently be renewed for an additional ten-day period. On May 8, 1975 the staff met with counsel for the company concerning the issuance of a press release relating to the trading suspension and the investigation by the Canadian authorities.

Company counsel has indicated that they will require additional time in order to obtain approval for their press release. This delay is caused by extensive internal review procedures established in July 1974 as a result of a Commission injunctive action against the company and several of its principals and some confusion over what is public information in Canada. We anticipate receiving their press release within the next few days.

• • • • •

David P. Doherty, Assistant Director
Robert G. Ryan, Branch Chief (51468)
Jacob I. Levine, Investigator (51468)
Harris S. Ammerman, Attorney (51476)

INFORMATIONAL MEMORANDUM

May 2, 1975

TO: The Commission

FROM: Division of Enforcement

SUBJECT: Canadian Javelin Limited
HO-815

On April 29, 1975, • • • the Commission approved a 10 day suspension of trading in the common stock of Canadian Javelin Limited ("Canadian Javelin") and issued an order of investigation concerning allegations of manipulative activities by insiders of Canadian Javelin.

The staff informed the Commission that the Royal Canadian Mounted Police ("RCMP") advised that they are conducting an extensive investigation into what they believe to be a manipulation of Canadian Javelin's common stock on several Canadian stock exchanges as well as the American Stock Exchange. They have also indicated that several United States residents and broker-dealers may also be involved in the manipulation.

The trading suspension was prompted by the RCMP's having informed us that they were in the process of executing more than 40 search warrants in connection with their investigation of this matter. The suspension was sought pending an announcement by Canadian Javelin concerning the investigation by the Canadian authorities.

DPDoherty, Assistant Director (x 51246)
RGRyan, Branch Chief (x 51469)
JILevine, Special Investigator (x 51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

MAY 28, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 19(a)(4) AND 15(c)(5)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from May 29, 1975 through June 7, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

May 23, 1975

TO : The Commission

FROM : The Division of Enforcement

SUBJECT : Canadian Javelin Limited

RECOMMENDATION : • • • • •

This suspension began on April 29, 1975. It was prompted by a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was conducting an extensive investigation into what it believed to be a manipulation of Canadian Javelin's common stock on several Canadian stock exchanges as well the American Stock Exchange.

Recently, members of our staff travelled to St. Johns, Newfoundland in order to examine numerous records seized, pursuant to search warrants, by the RCMP during their investigation. These records indicate that certain individuals associated with the company, with the assistance of brokers in Canada and the United States, appear to have been involved in an attempt to manipulate Canadian Javelin's stock during early 1975. The staff is vigorously pursuing this matter.

We are coordinating our efforts with the Amex and are advised that they intend to continue their suspension until we have determined the extent of the manipulation and its participants. This is a particularly troublesome matter inasmuch as Canadian Javelin appears to be a chronic violator.

Company counsel previously indicted that they intend to submit an appropriate release, but have not yet done so.

• • • • •

R. Ryan (51469)
J. Levine (51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

JUNE 6, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE No. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 19(a)(4) AND 15(c)(5)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Sections 19(a)(4) and 15(c)(5) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from June 8, 1975 through June 17, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

May 30, 1975

TO : The Commission

FROM : The Division of Enforcement

SUBJECT : Canadian Javelin Limited

RECOMMENDATION : • • • • •

This suspension began on April 29, 1975. It was prompted by a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was conducting an extensive investigation into what it believed to be a manipulation of Canadian Javelin's common stock on several Canadian stock exchanges as well the American Stock Exchange.

Recently, members of our staff travelled to St. Johns, Newfoundland in order to examine numerous records seized, pursuant to search warrants, by the RCMP during their investigation. These records indicate that certain individuals associated with the company, with the assistance of brokers in Canada and the United States, appear to have been involved in an attempt to manipulate Canadian Javelin's stock during early 1975. The staff is vigorously pursuing this matter.

We are coordinating our efforts with the Amex and are advised that they intend to continue their suspension until we have determined the extent of the manipulation and its participants. This is a particularly troublesome matter inasmuch as Canadian Javelin appears to be a chronic violator.

Company counsel previously indicted that they intend to submit an appropriate release, but have not yet done so.

• • • • •

R. Ryan (51469)
J. Levine (51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

JUNE 17, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from June 18, 1975 through June 27, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

June 16, 1975

TO : The Commission

FROM : The Division of Enforcement

SUBJECT : Canadian Javelin Limited

RECOMMENDATION : • • • • •

This suspension began on April 29, 1975. It was prompted by a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was conducting an extensive investigation into what it believed to be a manipulation of Canadian Javelin's common stock on several Canadian stock exchanges as well the American Stock Exchange.

Recently, members of our staff travelled to St. Johns, Newfoundland in order to examine numerous records seized, pursuant to search warrants, by the RCMP during their investigation. These records indicate that certain individuals associated with the company, with the assistance of brokers in Canada and the United States, appear to have been involved in an attempt to manipulate Canadian Javelin's stock during early 1975. The staff is vigorously pursuing this matter.

We are coordinating our efforts with the Amex and are advised that they intend to continue their suspension until we have determined the extent of the manipulation and its participants. This is a particularly troublesome matter inasmuch as Canadian Javelin appears to be a chronic violator.

Company counsel previously indicted that they intend to submit an appropriate release, but have not yet done so.

• • • • •

R. Ryan (51469)
J. Levine (51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

JUNE 27, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from June 28, 1975 through July 7, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

June 24, 1975

TO : The Commission

FROM : The Division of Enforcement

SUBJECT : Canadian Javelin Limited

RECOMMENDATION : • • • • •

This suspension began on April 29, 1975. It was prompted by a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was conducting an extensive investigation into what it believed to be a manipulation of Canadian Javelin's common stock on several Canadian stock exchanges as well the American Stock Exchange.

Recently, members of our staff travelled to St. Johns, Newfoundland in order to examine numerous records seized, pursuant to search warrants, by the RCMP during their investigation. These records indicate that certain individuals associated with the company, with the assistance of brokers in Canada and the United States, appear to have been involved in an attempt to manipulate Canadian Javelin's stock during early 1975. The staff is vigorously pursuing this matter.

We are coordinating our efforts with the Amex and are advised that they intend to continue their suspension until we have determined the extent of the manipulation and its participants. This is a particularly troublesome matter inasmuch as Canadian Javelin appears to be a chronic violator.

Company counsel previously indicted that they intend to submit an appropriate release, but have not yet done so.

• • • • •

R. Ryan (51469)
J. Levine (51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

JULY 7, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from July 8, 1975 through July 17, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: July 1, 1975

TO : The Commission

FROM : The Division of Enforcement

RE :

DATE FILED :

AMENDED :

SUBJECT : Canadian Javelin Limited

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchange and the American Stock Exchange ("AMEX").

Since continuance of the Commission's last 10 day trading suspension, members of the staff have taken testimony in this matter in Montreal, and St. John's, Newfoundland, and information is being exchanged with the RCMP. Much of the Canadian information was obtained by the RCMP • • • in Canada in 1975 which is the time period the staff's investigation is focusing on. The information gathered thus far, including testimony and documentary evidence, shows that brokers in Canada and the United States, assisted directly or were in some way involved since January 1975 in an attempt to manipulate Canadian Javelin's stock.

The staff met with representatives of the AMEX on June 27, 1975 which is conducting its own inquiry and we are further advised that they will continue their trading suspension until the Commission is in a position to reveal the extent of the manipulation and its participants. Canadian Javelin is deemed by the AMEX to be a chronic violator

and thought is being given to a possible delisting of the security.

A meeting was held on June 26, 1975 with special counsel to the company who was requested to investigate several transactions involving the company during the height of the alleged manipulation. In addition, company counsel has promised the staff that a meeting will be arranged with John C. Doyle during the month of July. Mr. Doyle, a fugitive from justice stemming from a securities conviction in 1965, is the largest single shareholder and has controlled the direction of Canadian Javelin since its inception. The staff has traced Mr. Doyle's telephone in Nassau to have been frequently called by certain persons believed to have been directly involved with wash trading during the relevant period. Furthermore, company counsel has not yet submitted an appropriate press release as was recently promised. The staff hopes to conclude the investigation shortly after it meets with Mr. Doyle.

• • • • •

Prepared by:

DPDoherty, Assistant Director (51246)
RGRyan, Branch Chief (51569)
H. Ammerman, Attorney (51476)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

JULY 17, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from July 18, 1975 through July 27, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: July 15, 1975

TO : The Commission
FROM : The Division of Enforcement
RE :
DATE FILED :
AMENDED :
SUBJECT : Canadian Javelin Limited
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

Matters pending at the conclusion of the Commission's last ten-day trading suspension are still being resolved. As previously stated, members of the staff have taken testimony in this matter in Montreal, and St. John's, Newfoundland, and information is being exchanged with the RCMP. Much of the Canadian information was obtained by the RCMP • • • in Canada in 1975 which is the time period the staff's investigation is focusing on. The information gathered thus far, including testimony and documentary evidence, shows that brokers in Canada and the United States, assisted directly or were in some way involved since January 1975 in an attempt to manipulate Canadian Javelin's stock.

The staff met with representatives of the AMEX on June 27, 1975 which is conducting its own inquiry and we are further advised that they will continue their trading suspension until the Commission is in a position to reveal the extent of the manipulation and its participants. Canadian Javelin is deemed by the AMEX to be a chronic violator and

thought is being given to a possible delisting of the security.

A meeting was held on June 26, 1975 with special counsel to the company who was requested to investigate several transactions involving the company during the height of the alleged manipulation. In addition, company counsel has promised the staff that a meeting will be arranged with John C. Doyle during the month of July. Mr. Doyle, a fugitive from justice stemming from a securities conviction in 1965, is the largest single shareholder and has controlled the direction of Canadian Javelin since its inception. The staff has traced Mr. Doyle's telephone in Nassau to have been frequently called by certain persons believed to have been directly involved with wash trading during the relevant period. Furthermore, company counsel has not yet submitted an appropriate press release as was recently promised. The staff hopes to conclude the investigation shortly after it meets with Mr. Doyle.

• • • • •

Prepared by:

RGRyan, Branch Chief (51569)
H. Ammerman, Attorney (51476)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

July 25, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from July 28, 1975 through August 6, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: July 21, 1975

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV")

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the announcement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulator appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

Soon after the staff began issuing subpoenas, most of the U.S. residents who participated in the scheme fled to Panama. Recently, an old time securities violator and close associate of Doyle refused to testify, invoking his 5th Amendment rights. Doyle has also recently indicated, through counsel, that he is relucant to testify in this matter.

The staff is currently communicating with the Quebec Securities Commission, the Grand Cayman police, and the

Bohemian authorities and plans to meet with several company officials in the near future. It is anticipated that this investigation will conclude soon thereafter.

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RGRyan (51469)
JLevine (51468)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

August 6, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from August 7, 1975 through August 16, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO: HO-815
DATE: August 1, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None.

This suspension began on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the announcement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulator appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

Soon after the staff began issuing subpoenas, most of the U.S. residents who participated in the scheme fled to Panama. Recently, an old time securities violator and close associate of Doyle refused to testify, invoking his 5th Amendment rights. Doyle has also recently indicated, through counsel, that he is reluctant to testify in this matter.

The staff is currently communicating with the Quebec

Securities Commission, the Grand Cayman police, and the Bohemian authorities and plans to meet with several company officials in the near future. It is anticipated that this investigation will conclude soon thereafter.

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RGRyan	(51469)
JLevine	(51468)
HAmmerman	(51476)
ADinerman	(426-0480)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

August 15, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from August 17, 1975 through August 26, 1975.

By the Commission.

/s/ George A. Fitzsimmons
Secretary

SHIRLEY E. HOLLIS
By: Shirley E. Hollis
Assistant Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: August 11, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears tht John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Canadian counsel for CJV and the partner in charge of Lee and Martin, the company's independent auditors. The staff has also been recently informed that Doyle is now receptive to meeting with the staff.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (426-0480)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

August 26, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from August 27, 1975 through September 5, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: August 21, 1975

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV")

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Canadian counsel for CJV and the partner in charge of Lee and Martin, the company's independent auditors. The staff has also been recently informed that Doyle is now receptive to meeting with the staff.

Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for the president of CJV and its counsel to testify before

the Commission and to furnish information concerning certain sensitive areas involving corporate activities. For this reason, they have sought postponements concerning their appearances and they anticipate testifying within the next week or so.

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RGRyan	(51469)
JLevine	(51468)
HAmmerman	(51476)
ADinerman	(426-0480)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

September 5, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from September 6, 1975 through September 15, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: September 2, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Canadian counsel for CJV and the partner in charge of Lee and Martin, the company's independent auditors. The staff has also been recently informed that Doyle is now receptive to meeting with the staff.

Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for

the president of CJV and its counsel to testify before the Commission and to furnish information concerning certain sensitive areas involving corporate activities. For this reason, they have sought postponements concerning their appearances and they anticipate testifying within the next week or so.

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RGRyan	(51469)
JLevine	(51468)
HAmmerman	(51476)
ADinerman	(426-0480)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

September 15, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from September 16, 1975 through September 25, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: September 11, 1975

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV")

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY: September 15, 1975.

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Canadian counsel for CJV and the partner in charge of Lee and Martin, the company's independent auditors. The staff has also been recently informed that Doyle is now receptive to meet with the staff.

Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for

the president of CJV and its counsel to testify before the Commission and to furnish information concerning certain sensitive areas involving corporate activities. Scheduled appearances of CJV's president and counsel for CJV before the staff have been postponed.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

September 25, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from September 26, 1975 through October 5, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: September 23, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Canadian counsel for CJV and the partner in charge of Lee and Martin, the company's independent auditors. The staff has also been recently informed that Doyle is now receptive to meeting with the staff.

Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for

the president of CJV and its counsel to testify before the Commission and to furnish information concerning certain sensitive areas involving corporate activities. Scheduled appearances of CJV's president and counsel for CJV before the staff have been postponed.

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RGRyan	(51469)
JLevine	(51468)
HAmmerman	(51476)
ADinerman	(51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

October 3, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from October 6, 1975 through October 15, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: October 1, 1975

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV")

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Doyle, a director of CJV, Doyle's son, a vice president of CJV, Canadian counsel for CJV and the partner in charge of CJV's independent auditor.

Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for the president of CJV and its counsel to testify before the

Commission and to furnish information concerning certain sensitive areas involving corporate activities. He also recently advised that on September 28 and 29, 1975 the board met in Costa Rica and authorized CJV counsel to furnish information to the staff; however, the board refused to waive any attorney-client privelege. With respect to our meeting with the President of CJV and the Doyles, counsel advised the staff that neither the president nor the Doyles intend to meet with the Commission's staff. The staff intends to pursue every available recourse to compel the testimony of these witnesses. We have also been advised that a Panamanian attorney, under CJV direction, has prepared a report of investigation concerning the manipulation which will be forwarded to the staff.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

October 15, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from October 16, 1975 through October 25, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: October 10, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Doyle, a director of CJV, Doyle's son, a vice president of CJV, Canadian counsel for CJV and the partner in charge of CJV's independent auditor.

Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for the president of CJV and its counsel to testify before the Commission and to furnish information concerning certain

sensitive areas involving corporate activities. He also recently advised that on September 28 and 29, 1975 the board met in Costa Rica and authorized CJV counsel to furnish information to the staff; however, the board refused to waive any attorney-client privilege. With respect to our meeting with the President of CJV and the Doyles, counsel advised the staff that neither the president nor the Doyles intend to meet with the Commission's staff. The staff intends to pursue every available recourse to compel the testimony of these witnesses. We have also been advised that a Panamanian attorney, under CJV direction, has prepared a report of investigation concerning the manipulation which will be forwarded to the staff.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

October 24, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from October 26, 1975 through November 4, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: October 17, 1975

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV")

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The staff recently interviewed partners of Lee & Martin, CJV's independent auditors. A meeting was also scheduled with Canadian counsel for CJV; however, at the last moment, after months of discussing such a meeting, the witness decided to retain counsel and sought another postponement.

On September 22, 1975 Steptoe & Johnson notified the staff that CJV no longer desired them to represent the company before the Commission and the AMEX. Steptoe &

Johnson previously advised that they recommended that CJV and its officers and directors cooperate with the staff in this investigation.

The staff is currently awaiting receipt of what has been represented to be an extensive investigative report prepared by a Panamanian attorney at the request of CJV. The reports supposedly relates to interviews with several Panamanians whose corporations were alleged, in RCMP affidavits, to be involved in the manipulation. The staff also plans to further discuss with the AMEX a long term solution to the continuous CJV problems.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

November 4, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from November 5, 1975 through November 14, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: October 31, 1975

TO	:	The Commission
FROM	:	Division of Enforcement
RE	:	Canadian Javelin Limited ("CJV")
DATE FILED	:	
AMENDED	:	
SUBJECT	:	
RECOMMENDATION	:	• • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

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The staff recently received a report prepared by a Panamanian attorney at the request of CJV including written interrogatories and answers from two individuals who are being considered as possible defendants in the proposed civil action.

The staff still intends to meet with Canadian counsel for CJV who may also be involved in the manipulation. Such meeting has been delayed while he retains counsel.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

November 14, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from November 15, 1975 through November 24, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

1-4192

FILE NO.: HO-815
DATE: November 7, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •
ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None.

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

• • • • •

The staff still intends to meet with Canadian counsel for CJV who may also be involved in the manipulation. Such meeting has been delayed in order to provide his counsel with an opportunity to familiarize himself with the matter.

• • • • •

RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

November 24, 1975

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD.
FILE No. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from November 25, 1975 through December 4, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

1-4192
FILE NO: HO-815
DATE: November 18, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")

DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

• • • • •

The staff had intended to meet with • • • who may also be involved in the manipulation. Such meeting was delayed in order to provide his counsel with an opportunity to familiarize himself with the matter. However, after substantial delays, the staff has been informed that he no longer intends to discuss this matter with the staff.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

December 4, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from December 5, 1975 through December 14, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

1-4192
FILE NO.: HO-815

DATE: November 28, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")

DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

December 12, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from December 15, 1975 through December 24, 1975.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

1-4192
FILE NO.: HO-815

DATE: December 5, 1975

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV")

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

The RCMP • • •. Their case, for the most part, relates to activities in Canada prior to the January 27, 1975 resumption of trading in the U.S.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

December 24, 1975

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from December 25, 1975 through January 3, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

1-4192
FILE NO.: HO-815

DATE: December 19, 1975

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV")

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

After review by the Division of Enforcement • • • it was determined that supervisory personnel at several U.S. broker-dealers should be interviewed in order to resolve any participation by these broker-dealers in the manipulation.

It is also significant that on November 3, 1975, after attempts by the staff to obtain information from CJV and

its directors utilizing the provisions of the U.S. District Court decree issued on July 17, 1974, a CJV director instituted a civil action in Toronto, Ontario, Canada against CJV, the Commission and Meyer Eisenberg seeking, among other things, to nullify the ancillary relief contained in the prior consent decree agreed to by CJV. The Office of General Counsel and the Division of Enforcement are pursuing this matter.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

January 2, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from January 4, 1976 through January 13, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

1-4192
FILE NO.: HO-815
DATE: December 29, 1975

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 197[illegible] in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

After review by the Division of Enforcement • • •, it was determined that supervisory personnel at several U.S. broker-dealers should be interviewed in order to resolve any participation by these broker-dealers in the manipulation.

It is also significant that on November 3, 1975, after attempts by the staff to obtain information from CJV and its directors utilizing the provisions of the U.S. District

Court decree issued on July 17, 1974, a CJV director instituted a civil action in Toronto, Ontario, Canada against CJV, the Commission and Meyer Eisenberg seeking, among other things, to nullify the ancillary relief contained in the prior consent decree agreed to by CJV. The Office of General Counsel and the Division of Enforcement are pursuing this matter.

On December 19, 1975, an order was issued by the U.S. District Court for the Southern District of New York requiring that CJV appoint Meyer Eisenberg to defend the Toronto law suit on behalf of CJV and pay his fees for such representation. CJV has refused to defend the Toronto action and has indicated that it may appeal the district court ruling.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

January 13, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from January 14, 1976 through January 23, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

1-4192
FILE NO.: HO-815
DATE: January 9, 1976

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV")
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

• • • • •

With respect to the Toronto law suit against CJV, the Commission and Meyer Eisenberg, and the recent ruling from the U,S. District Court for the Southern District of

New York, CJV has filed an appeal to set aside the court's decision of November 19, 1975 requiring CJV to appoint Eisenberg to defend CJV in the Toronto action. The appeal is still pending.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

January 22, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from January 24, 1976 through February 2, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: January 16, 1976

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV") 1-4192
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation.

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On January 14, 1976 the RCMP announced that criminal informations had been filed in St. Johns, Newfoundland against Doyle and four others charging them with fraud in connection with the trading of the common stock of CJV and one of its subsidiaries.

With respect to the Toronto law suit against CJV, the Commission and Mayer Eisenberg, and the recent ruling from the U.S. District Court for the Southern District of New York, CJV has filed an appeal to set aside the court's decision of November 19, 1975 requiring CJV to appoint Eisenberg to defend CJV in the Toronto action. The appeal is still pending.

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RGRyan	(51469)
JLevine	(51468)
HAmmerman	(51476)
ADinerman	(51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

February 2, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 3, 1976 through February 12, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: January 23, 1976

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV") 1-4192

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director, has been behind the manipulation.

• • • • •

With respect to the Toronto law suit against CJV, the Commission and Meyer Eisenberg, and the recent ruling from the U.S. District Court for the Southern District of New York, CJV has filed an appeal to set aside the court's decision of November 19, 1975 requiring CJV to appoint

Eisenberg to defend CJV in the Toronto action. The appeal is still pending.

To date, there has been no public release by the company concerning the RCMP investigation or the recent criminal informations filed in St. Johns, Newfoundland. Moreover, CJV continues to refuse to cooperate with the staff.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

February 12, 1976

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 13, 1976 through February 22, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: February 5, 1976

TO : **The Commission**

FROM : **Division of Enforcement**

RE : **Canadian Javelin Limited ("CJV") 1-4192**

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director, has been behind the manipulation.

• • • • •

With respect to the Toronto law suit against CJV, the Commission and Meyer Eisenberg, and the recent ruling from the U.S. District Court for the Southern District of

New York, CJV has filed an appeal to set aside the court's decision of November 19, 1975 requiring CJV to appoint Eisenberg to defend CJV in the Toronto action. The appeal is still pending.

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RGRyan	(51469)
JLevine	(51468)
HAmmerman	(51476)
ADinerman	(51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

February 20, 1976

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from February 23, 1976 through March 3, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: February 12, 1976

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV") 1-4192

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director, has been behind the manipulation.

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With respect to the Toronto law suit against CJV, the Commission and Meyer Eisenberg, and the recent ruling from the U.S. District Court for the Southern District of

New York, CJV has filed an appeal to set aside the court's decision of November 19, 1975 requiring CJV to appoint Eisenberg to defend CJV in the Toronto action. The appeal is still pending.

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RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

March 3, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from March 4, 1976 through March 13, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: February 26, 1976

TO : The Commission
FROM : Division of Enforcement
RE : Canadian Javelin Limited ("CJV") 1-4192
DATE FILED :
AMENDED :
SUBJECT :
RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock had been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director, has been behind the manipulation.

• • • • •

With respect to the Toronto law suit against CJV, the Commission and Meyer Eisenberg, and the recent ruling from the U.S. District Court for the Southern District of

New York, CJV has filed an appeal to set aside the court's decision of November 19, 1975 requiring CJV to appoint Eisenberg to defend CJV in the Toronto action. The appeal is still pending.

• • • • •

RGRyan	(51469)
JLevine	(51468)
HAmmerman	(51476)
ADinerman	(51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

March 12, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from March 14, 1976 through March 23, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: March 4, 1976

TO : The Commission

FROM : Division of Enforcement

RE : Canadian Javelin Limited ("CJV") 1-4192

DATE FILED :

AMENDED :

SUBJECT :

RECOMMENDATION : • • • • •

ACTION REQUESTED BY:

NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's trading suspension on April 29, 1975 CJV's stock had been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director, has been behind the manipulation.

• • • • •

With respect to the Toronto law suit against CJV, the Commission and Meyer Eisenberg, and the recent ruling from the U.S. District Court for the Southern District of

New York, CJV has filed an appeal to set aside the court's decision of November 19, 1975 requiring CJV to appoint Eisenberg to defend CJV in the Toronto action. The appeal is still pending.

• • • • •

RGRyan (51469)
JLevine (51468)
HAmmerman (51476)
ADinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

March 23, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE NO. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from March 24, 1976 through April 2, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: March 19, 1976

TO	:	The Commission
FROM	:	Division of Enforcement
RE	:	
DATE FILED	:	
AMENDED	:	
SUBJECT	:	Canadian Javelin Limited ("CJV") 1-4192
RECOMMENDATION	:	• • • • •

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of CJV's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The Commission approved on March 11, 1976 the filing of an injunctive action in the United States District Court for the Southern District of New York to enjoin John C. Doyle, Robert K. Glass, Albert A. Furst, Kiely Daniel Landrigan, Hubert Ducharme, Union Trust Corporation, Guardian Management, S.A., Securities & Real Estate Holding Co. (Overseas) Ltd., and Parsons & Landrigan Ltd. from engaging in further violations of Section 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder. As noted earlier this case involves an illegal scheme to artificially manipulate and maintain the price of CJV common stock on the AMEX as well as several Canadian stock exchanges from January 27, 1975 through April 29, 1975.

The staff believes that with the filing of this complaint, the public purpose for which the suspension of trading of CJV common stock was instituted on April 29, 1975 will have been amply served.

The current 10-day suspension of CJV stock expires March 23, 1976. The complaint and accompanying litigation papers are being drafted and revised by the staff with the

present expectation that the suit will be filed in the Southern District of New York on or before expiration of the current trading suspension • • •.

The public release to be issued when the complaint is filed will contain information concerning the allegations made by the Commission and the cautionary language reminding brokers of their responsibilities pursuant to Rule 15c-11.

• • • • •

RG Ryan	(51469)
HS Ammerman	(51476)
RV Norell	(51508)
AE Dinerman	(51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

April 2, 1976

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
FILE NO. 500-1
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

The common stock of Canadian Javelin, Ltd. being traded on the American Stock Exchange pursuant to provisions of the Securities Exchange Act of 1934 and all other securities of Canadian Javelin, Ltd. being traded otherwise than on a national securities exchange; and

It appearing to the Securities and Exchange Commission that the summary suspension of trading in such securities on such exchange and otherwise than on a national securities exchange is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on the above mentioned exchange and otherwise than on a national securities exchange is suspended, for the period from April 3 through April 12, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: March 26, 1976

TO : The Commission

FROM : Division of Enforcement

RE :

DATE FILED :

AMENDED :

SUBJECT : Canadian Javelin Limited ("CJV") 1-4192

RECOMMENDATION : • • • • •

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of CJV's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The Commission approved on March 11, 1976 • • • the filing of an injunctive action in the United States District Court for the Southern District of New York to enjoin John C. Doyle, Robert K. Glass, Albert A. Furst, Kiely Daniel Landrigan, Hubert Ducharme, Union Trust Corporation, Guardian Management, S.A., Securities & Real Estate Holding Co. (Overseas) Ltd., and Parsons & Landrigan Ltd. from engaging in further violations of Section 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder. As noted earlier this case involves an illegal scheme to artificially manipulate and maintain the price of CJV common stock on the AMEX as well as several Canadian stock exchanges from January 27, 1975 through April 29, 1975.

The complaint is being reviewed and the staff anticipates filing this action in the Southern District of New York within the next few days.

The staff has recently received information that there have been changes in the management of CJV. However, the current status of management is not clear. At first the staff learned that Doyle resigned as a director and those

officers under his domination were fired. Several days later the staff learned that Doyle revoked a trust relating to several outside independent directors, dismissed them and replaced them with friends and associates. This action by Doyle may constitute a violation of the July 17, 1974 decree issued by Judge McMahon. New management is now seeking a permanent injunction in Montreal barring Doyle from interfering with the operations of the company and the activities of management. The staff intends to closely follow these developments, and, if necessary, recommend to the Commission whatever action seems appropriate.

• • • • •

RGRyan (51469)
JILevine (51468)
RVNorell (51508)
AEDinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

April 12, 1976

IN THE MATTER OF TRADING IN SECURITIES OF CANADIAN JAVELIN, LTD. FILE No. 500-1 SECURITIES EXCHANGE ACT OF 1934 SECTION 12(k)	NOTICE OF SUSPENSION OF TRADING

It appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Canadian Javelin, Ltd., • • • being traded on a national securities exchange or otherwise, is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from April 13, 1976 through April 22, 1976.

By the Commission.

GEORGE A. FITZSIMMONS
Secretary

/s/ Shirley E. Hollis
By: SHIRLEY E. HOLLIS
Assistant Secretary

MEMORANDUM

FILE NO.: HO-815
DATE: April 2, 1976

TO	:	The Commission
FROM	:	Division of Enforcement
RE	:	
DATE FILED	:	
AMENDED	:	
SUBJECT	:	Canadian Javelin Limited ("CJV") 1-4192
RECOMMENDATION	:	• • • • •

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of CJV's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The Commission approved on March 11, 1976 • • • the filing of an injunctive action in the United States District Court for the Southern District of New York to enjoin John C. Doyle, Robert K. Glass, Albert A. Furst, Kiely Daniel Landrigan, Hubert Ducharme, Union Trust Corporation, Guardian Management, S.A., Securities & Real Estate Holding Co. (Overseas) Ltd., and Parson & Landrigan Ltd. from engaging in further violations of Section 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder. As noted earlier this case involves an illegal scheme to artificially manipulate and maintain the price of CJV common stock on the AMEX as well as several Canadian stock exchanges from January 27, 1975 through April 29, 1975.

The complaint has not yet been filed because of several recent developments within the company. Company counsel and court appointed special counsel have recently met with the staff concerning managerial and financial problems at CJV. The company is now delinquent with respect to the filing of its Form 10-K due March 31, 1976. CJV's auditors have informed the board that they recently received infor-

mation which may cause them to revoke their certification of CJV's balance sheet as of December 31, 1973. In addition, a temporary injunction has been issued by a Montreal court barring Doyle and his "management group" from interfering with the activities of CJV. New management has informed us that they wish to cooperate with the staff, waive any attorney-client privilege, and make available all CJV officers, directors and employees to the staff.

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RGRyan	(51469)
JILevine	(51468)
RVNorell	(51508)
AEDinerman	(51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

April 21, 1976

IN THE MATTER OF TRADING IN SECURITIES
OF
CANADIAN JAVELIN, LTD.
SECURITIES EXCHANGE ACT OF 1934
SECTION 12(k)

NOTICE OF SUSPENSION OF TRADING

On March 11, 1976, the Commission received a petition from Mr. Samuel H. Sloan seeking review of all of the suspensions of trading in Canadian Javelin Ltd. securities from November 29, 1973, to date. Mr. Sloan asked, among other things, that the Commission refrain from renewing the trading suspension of Canadian Javelin Ltd. and that the Commission declare that the previous trading suspensions were illegal.

Mr. Sloan states that he is the owner of 13 shares of Canadian Javelin Ltd., that in the past he has engaged in substantial purchases and short sales of shares of that stock, particularly during 1973 prior to a suspension of trading beginning on November 29, 1973.

On that date the Commission not only suspended trading of Canadian Javelin common stock, but also instituted a civil injunctive action against it and certain of its principals, charging violations of the registration and antifraud provisions of the Securities Act of 1933; of antifraud provisions of the Securities Exchange Act of 1934, as well as of annual and periodic reporting requirements of that Act. In addition, it was charged that false reports were filed with the Commission by Canadian Javelin Ltd. and that the company had disseminated a series of press releases containing false and misleading information relating to its purported development of Panamanian mineral properties. This resulted in a series of suspensions which concluded on January 26, 1975.

According to criminal informations returned in Canada, it appears that the common stock of Canadian Javelin may have been artificially manipulated on two Canadian stock exchanges, and that this was continuing after January 26, 1975. The Commission is actively investigating, among other things, possible manipulation of the stock in the United States securities markets. The Commission on April 29, 1975, again suspended trading as a result of a lack of information concerning pending investigative action by Canadian regulatory authorities.

In addition, a number of private civil suits are pending in Canada involving a dispute regarding control of the company. A Canadian provincial court recently issued an order installing a new board of directors and this order is now on appeal.

Mr. Sloan pointed out that the most recent annual report issued by Canadian Javelin Ltd. contains an earnings statement and a balance sheet of Canadian Javelin Ltd., both of which are certified by the accounting firm of Lee & Martin. Since March 31, 1975, however, the company has been delinquent with respect to the filing of its 10-K report.

Mr. Sloan also contends that the trading suspension aids Mr. Doyle to the detriment of United States stockholders and concludes from this "that in all probability Mr. Doyle is bribing a person or persons at the SEC in order to bring about repeated suspensions of Canadian Javelin Ltd." The facts he alleges in no way support this speculation.

Accordingly, it appearing to the Securities and Exchange Commission that the summary suspension of trading in the securities of Canadian Javelin Ltd. being traded on a national securities exchange or otherwise is required in the public interest and for the protection of investors;

THEREFORE, pursuant to Section 12(k) of the Securities Exchange Act of 1934, trading in such securities on a national securities exchange or otherwise is suspended, for the period from April 23, 1976, through May 2, 1976.

By the Commission.

/s/ George A. Fitzsimmons
GEORGE A. FITZSIMMONS
Secretary

MEMORANDUM

FILE NO.: HO-815

DATE: April 20, 1976

TO : The Commission
FROM : Division of Enforcement
RE :
DATE FILED :
AMENDED :
SUBJECT : Canadian Javelin Limited ("CJV") 1-4192
RECOMMENDATION : • • • • •

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of CJV's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The Commission approved on March 11, 1976 • • • the filing of an injunctive action in the United States District Court for the Southern District of New York to enjoin John C. Doyle, Robert K. Glass, Albert A. Furst, Kiely Daniel Landrigan, Hubert Ducharme, Union Trust Corporation, Guardian Management, S.A., Securities & Real Estate Holding Co. (Overseas) Ltd., and Parson & Landrigan Ltd. from engaging in further violations of Section 9(a) and 10(b) of the Exchange Act and Rule 10b-5 thereunder.[1] As noted earlier this case involves an illegal scheme to artificially manipulate and maintain the price of CJV common stock on the AMEX as well as several Canadian stock exchanges from January 27, 1975 through April 29, 1975.

The staff expects to file its complaint in this matter during the week of April 19, 1976 • • • in view of CJV's continued delinquency in filing its 10K, the company may request

[1] Filing of this action has been delayed because of recent management changes and the resultant availability of certain information which was deemed pertinent to the staff's investigation.

that the suspension be continued even after the staff's complaint is filed.

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RGRyan (51469)
JILevine (51468)
RVNorell (51508)
AEDinerman (51697)

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the
Matter of the
Application of

Samuel H. Sloan

RECEIVED
Office of the Secretary
March 12, 1976

VERIFIED PETITION FOR REVIEW

On the annexed affidavit Samuel H. Sloan sworn to the 5th day of March, 1976 the undersigned hereby petitions the United States Securities & Exchange Commission for review of all orders of the suspension of trading in Canadian Javelin Ltd. from November 29, 1973 up to and including such date as this petition may be decided. The petitioner demands a hearing and requests a declaration that each and every order of suspension of trading of Canadian Javelin Ltd. has been illegal and has deprived the petitioner of liberty and property without due process of law and that the Securities & Exchange Commission has violated the Securities Exchange Act of 1934 and has abused agency due process. The petitioner further demands an order declaring that there be no further suspensions of trading in the shares of Canadian Javelin Ltd. and that the current suspension in effect shall terminate.

Dated: March 5, 1976

Yours, etc.

/s/ Samuel H. Sloan
SAMUEL H. SLOAN
1761 Eastburn Avenue
Apartment A 5
Bronx, New York 10457
(212) 299-2095

UNITED STATES OF AMERICA
BEFORE THE
SECURITIES AND EXCHANGE COMMISSION

In the
Matter of the
Application of
Samuel H. Sloan

AFFIDAVIT

State of New York }
County of New York } SS:.

Samuel H. Sloan, being duly sworn, deposes and says:

1. I make this affidavit in support of a petition for review of orders of suspension of trading in Canadian Javelin Ltd. Previously, I applied to the United States Court of Appeals for the Second Circuit for much the same relief. On October 15, 1975 the Court of Appeals dismissed my petition without prejudice because counsel for the Securities & Exchange Commission ("S.E.C.") indicated that the S.E.C. was willing to give me "some sort of hearing." Promptly thereafter, I applied to the S.E.C. for the hearing which had in effect been promised to me in the Court of Appeals decision. Approximately one month later I received a reply which indicated that the S.E.C. might give me a hearing if I were to submit an affidavit setting forth facts which I intended to prove at this hearing which would demonstrate that the S.E.C. had abused its discretion in suspending trading in Canadian Javelin Ltd. In my opinion this response indicates an intention contrary to that which is embodied in the Court of Appeals decision because it is obvious to me that when the Second Circuit stated in its opinion that it wanted an adequate factual record it meant that it wanted a record which would set forth the reasons for which the S.E.C. suspended trading in Canadian Javelin Ltd. and which would provide "substantial evidence" to demonstrate that those suspensions were justified. To this date, the S.E.C. has given no reason for its suspensions of trading in Canadian Javelin Ltd. and since I do not know why the

S.E.C. persists in suspending trading in Canadian Javelin Ltd. I cannot disprove any "facts" upon which the suspensions are based. As I understand the Court of Appeals decision, the hearing which I have demanded should commence with testimony by the S.E.C. for the purpose of meeting the burden of proof which is properly on the S.E.C. to demonstrate that the suspensions of trading are legal. Only after cross examination of the S.E.C.'s witnesses will I be in a position to know why the S.E.C. has suspended trading in Canadian Javelin Ltd. in the first instance and only then will I be in a position to rebut this testimony.

2. In any event, regardless of what testimony might be given by witnesses for the S.E.C., it is clear that the suspensions are illegal and constitute an abuse of my due process rights. I am the owner of 13 shares of Canadian Javelin Ltd. In the past I engaged in substantial purchases and short sales of shares of Canadian Javelin Ltd. particularly during 1973 prior to the November 29, 1973 suspension of trading. The Court of Appeals has already decided that because of these circumstances I am an aggrieved person and have standing to review the suspension on orders in question. After the suspension of November 29, 1973 the S.E.C. proceeded to make successive ten day orders of suspension. Except for a three month period in early 1975, the S.E.C. has suspended trading in Canadian Javelin Ltd. on a continuous basis and that suspension continues to be in effect until this day. This is clearly a violation of Section 12(k) of the Securities Exchange Act of 1934 (15 U.S.C. 78L(k)) which gives the S.E.C. the power to suspend trading for not more than ten (10) days. Thus, the suspensions of trading are illegal regardless of what reason the S.E.C. may give to justify the suspensions.

3. Except for a brief period in late 1973, Canadian Javelin Ltd. has traded on a continuous basis on the Montreal Stock Exchange. Its present price is between $1.50 and $2.00 per share. Canadian Javelin Ltd. has approximately 12,000 stockholders who are citizens or residents of the United States. During the brief period in which it was allowed to trade in early 1975, Canadian Javelin Ltd. was frequently listed as one of the ten most actively traded securities on the American Stock Exchange. In spite of the

trading suspensions Canadian Javelin Ltd. is to this date listed on the American Stock Exchange.

4. Canadian Javelin Ltd. has been mailing annual and quarterly earnings reports to all stockholders including myself on a regular basis. Prior to the 1973 suspension, Canadian Javelin Ltd. did not mail quarterly reports to its stockholders. Thus, Canadian Javelin Ltd. has provided more complete information to its stockholders when trading was suspended than it did prior to the suspension.

5. The most recent annual report issued by Canadian Javelin Ltd. contains an earnings statement and a balance sheet both of which are certified by the accounting firm Lee & Martin. The income statement shows that Canadian Javelin Ltd. had revenues of $7,619,330 during the year of 1974 and net income of $1,912,253 which amounts to $0.27 per share on a fully diluted basis. The balance sheet shows that Canadian Javelin Ltd. has shareholders' equity of $47,242,117 which works out to a book value of $6.58 per share.

6. The six month earnings reports for 1975 shows revenues of $3,198,884, net income of $303,623 and a profit of $.04 per share. The nine months earnings report for the quarter ending September 30, 1976 shows revenues of $3,834,105 and a loss of $828,976 which amounts to $0.116 per share. The annual report for the year 1975 is not yet due.

7. From this and from other facts reported in the annual and quarterly reports of Canadian Javelin Ltd. and from documents filed with the S.E.C. it is apparent that Canadian Javelin Ltd. is a substantial company. Indeed, there appears to be no possible justification for the current series of suspensions. It appears, however, that officers of Canadian Javelin Ltd. have actively attempted to influence the S.E.C. in an effort to bring about the continued suspension of trading. In fact, when the S.E.C. stated in early January, 1975 that it was going to lift the trading suspension, counsel for Canadian Javelin Ltd. applied for and obtained from United States District Judge Lloyd F. MacMahon in *S.E.C.* v. *Canadian Javelin Ltd.* S.D.N.Y. 74 Civil 5074 an order which temporarily restrained the S.E.C. from lifting its suspension of trading. The rationale for this order was that many United States residents hold their Canadian Javelin

Ltd. shares in margin accounts and that if the suspension of trading were lifted abruptly, a disorderly market would develop and most of the margin holders would be forced to sell. At present, however, Canadian Javelin Ltd. is trading for a much lower price than it was even in January, 1975 and it is clear that margin holders, most of whom probably bought their stock at $10 per share or higher, would now either be required to sell or to put up more margin. Under these circumstances, the price of Canadian Javelin Ltd. would almost certainly go down. This would explain why officers of Canadian Javelin Ltd. who own substantial shares of that corporation would go to the expense of retaining counsel in order to bring about the continued suspension of trading in Canadian Javelin Ltd.

8. However, at the same time I would like to make a substantial investment in Canadian Javelin Ltd. at current prices but am prohibited from doing so because of the suspension of trading. Clearly, I am being injured as are all other persons who wish to buy and sell shares of Canadian Javelin Ltd. as opposed to margin holders who wish to do neither. It appears that the only individuals who do not wish the shares of Canadian Javelin Ltd. to trade are officers and major stockholders of that corporation including principally John C. Doyle who is said to control Canadian Javelin Ltd. However, Mr. Doyle is not known to have been in the United States for about ten years and any shares owned by him are restricted or insider shares so it would appear that he would have no legal right to protest if the suspension of trading were lifted. It is ironic that by suspending trading in Canadian Javelin Ltd. the S.E.C. is aiding Mr. Doyle to the detriment of all United States stockholders of Canadian Javelin Ltd. Mr. Doyle has been accused many times of bribing government officials in Newfoundland and other places. This led former Canadian Prime Minister John Diefenbacher once to state: "Wherever John Doyle is, there is political fixing."

9. In the case of Canadian Javelin Ltd. every original suspension had occurred at a time when the price of the shares of Canadian Javelin Ltd. was dropping rapidly. In 1971 trading was suspended when adverse publicity caused a drop in the price of Canadian Javelin Ltd. shares. In 1972 trading was again suspended when an unfavorable

article in the Wall Street Journal caused an abrupt three point drop in the price of Canadian Javelin Ltd. The 1973 suspension occurred after an October 25, 1973 unfavorable Wall Street Journal article which led Canadian Javelin Ltd. to request an immediate halt of trading and this halt was still in effect at the time of the S.E.C. suspension. Finally, in 1975 the price of Canadian Javelin Ltd. dropped rapidly from 10¾ to about 5 just prior to the S.E.C. suspension. These facts and the underlying circumstances demonstrate that no suspension has occurred because of a market manipulation or because the price was too high but, to the contrary, the S.E.C. has suspended trading in Canadian Javelin Ltd. in order to aid a manipulation of the market. It should be noted that every time the S.E.C. has suspended trading the suspension has not been lifted until a date when the market for Canadian Javelin Ltd. shares on the Montreal Stock Exchange was strong and the price of these shares was subject to an immediate rise.

10. From these facts it is clear that the Canadian Javelin Ltd. suspensions have been timed in such a way as to cause benefit to John C. Doyle. This fact combined with a knowledge of Mr. Doyle's background has led me to the conclusion that in all probability Mr. Doyle is bribing a person or persons at the S.E.C. in order to bring about repeated suspensions of Canadian Javelin Ltd. I intend to develop facts at a hearing before the S.E.C. in an attempt to prove that this is the case. At this hearing it will be necessary to have the benefit of the testimony of those S.E.C. officials who are connected with the decision making process and therefore I request that I be given subpoena power if necessary to coerce this testimony.

11. In this petition I incorporate by reference the legal arguments found in my brief filed with the Court of Appeals in *Sloan* v. *S.E.C.* 74-2457. The requisite number of copies of this brief have already been filed with the S.E.C.

WHEREFORE, I demand that the relief requested in this position be granted.

Samuel H. Sloan

Sworn to before me this
—th day of ————, 1976
NOTARY PUBLIC

MEMORANDUM

April 9, 1976

TO : The Commission
FROM : Office of the General Counsel
RE : The "petition" of Samuel H. Sloan that the Commission "review all orders of the suspension of trading in Canadian Javelin, Ltd. from November 29, 1973 to and including such date as this petition may be decided." Mr. Sloan demands that the Commission declare all of the previous Canadian Javelin trading suspensions illegal and that the Commission issue an order declaring that there will be no further suspensions of trading in Canadian Javelin Ltd.

RECOMMENDATION : • • • • •

OTHER OFFICES AND DIVISIONS
CONSULTED: Division of Enforcement.

NOVEL, UNIQUE OR COMPLEX ISSUES
INVOLVED: This will be the initial use of the procedure recently adopted by the Commission for handling objections to summary trading suspensions.

Background

As the Commission will recall the United States Court of Appeals for the Second Circuit, in October, 1975, rejected Mr. Sloan's attack on summary trading suspensions based upon the Commission's representation that we would give a person who claimed to be aggrieved by such a suspension an opportunity to be heard (*Sloan* v. *Securities and Exchange Commission*, C.A. 2, No. 74-2457). The Court indicated at that time that such a hearing should result in a record which could later be reviewed on appeal if that became necessary. As a result of that decision the Commission recently indicated that it would issue a release announcing

the adoption of a procedure whereby a person claiming to be adversely affected by a suspension could petition the Commission not to renew such a suspension.[1] The release is to state that such petitions "may not be in the form of a letter or other statement, should set forth with particularity the facts upon which petitioner relies and should be sworn to by the petitioner or an authorized officer of the petitioner."

Facts

On or about March 15, 1976, Mr. Sloan served the Commission with a document entitled "VERIFIED PETITION FOR REVIEW"[2] (a copy of which is attached) and an affidavit in support thereof. In his "petition" Mr. Sloan asks the Commission to review all of the suspensions of trading in Canadian Javelin, Ltd. securities from November 29, 1973, up to and including the date this petition may be decided. He further demands a hearing and a declaration that all suspensions of trading in Canadian Javelin have been illegal. He finally demands that the Commission issue an order declaring that there will be no further suspensions of trading in Canadian Javelin. In the affidavit attached to the petition Mr. Sloan alleges, among other things, that Section 12(k) only permits the Commission to suspend trading for a ten-day period and that the renewal of suspensions violates that statutory provision. Mr. Sloan then purports to make an analysis of the market conditions in the stock of Canadian Javelin at the times the Commission instituted various trading suspensions and concludes that the suspensions were in aid of a market manipulation. Mr. Sloan states that the only conclusion that he can reach is that "Mr. Doyle is bribing a person or persons at the S.E.C. . . ."

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DFerber —51170
MJStewart —51224
FBWade —51286

[1] See Attachment A to memorandum of this Office and Division of Enforcement, dated March 11, 1976, a copy of which Attachment is appended hereto.

[2] This petition was filed in accordance with a staff instruction to Mr. Sloan, since he had previously attempted to obtain review by filing a copy of voluminous briefs and unsworn allegations he had filed in various court proceedings.

ATTACHMENTS:

1) Draft notice of suspension of trading and denial of petition for review.
2) Draft letter to Mr. Sloan.
3) Attachment A memorandum dated March 11, 1976.
4) Verified Petition for Review.
5) Mr. Sloan's affidavit in support of his petition.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Filed April 23, 1976

Samuel H. Sloan, petitioner, —against— Securities and Exchange Commission, respondent.	Docket No. 76-4110

PETITION FOR REVIEW

Samuel H. Sloan hereby petitions this Court for review of the Orders of the Securities and Exchange Commission suspending trading in Canadian Javelin Ltd. dated April 30, 1975; May 9, 1975; May 19, 1975, May 29, 1975; June 8, 1975; June 18, 1975; June 28, 1975; July 8, 1975; July 18, 1975; July 28, 1975; August 7, 1975; August 17, 1975; August 27, 1975; September 6, 1975; September 16, 1975; September 26, 1975; October 6, 1975; October 16, 1975; October 26, 1975; November 5, 1975; November 15, 1975; November 25, 1975; December 5, 1975; December 15, 1975; January 4, 1976; January 14, 1976; January 24, 1976; February 3, 1976; February 13, 1976; February 23, 1976; March 4, 1976; March 14, 1976; March 24, 1976, April 3, 1976; April 13, 1976; April 23, 1976; and any further orders until such time as this petition for review is decided.

/s/ Samuel H. Sloan
SAMUEL H. SLOAN
1761 Eastburn Avenue—Apartment A5
Bronx, New York 10457
(212) 299-2095

TO: Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Samuel H. Sloan petitioner —against— Securities and Exchange Commission respondent.	*ORDER TO SHOW CAUSE*

Upon reading and filing the annexed affidavit of Samuel H. Sloan sworn to the 23rd day of April, 1976 and the exhibits attached thereto and sufficient reason appearing therefore it is hereby

ORDERED that the Securities and Exchange Commission show cause on the day of April, 1976 why an order should not be made setting aside the orders of suspension of trading in Canadian Javelin Ltd. and it is further

ORDERED that the Securities and Exchange Commission file the record of this proceeding forthwith and it is further

ORDERED that the current order of suspension of trading in Canadian Javelin Ltd. be stayed.

Let service of a copy of this order on the Securities and Exchange Commission on or before April , 1976 be deemed sufficient.

DATED: April ,1976

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Samuel H. Sloan petitioner —against— Securities and Exchange Commission respondent.	*AFFIDAVIT*

State of New York }
County of New York } ss:

Samuel H. Sloan, being duly sworn, deposes and says:

1. I make this affidavit in support of my request for an order to show cause. In this petition for review, I am requesting that this Court set aside orders of the Securities and Exchange Commission ("S.E.C.") suspending trading in Canadian Javelin Ltd. on the grounds that (1) the findings of the Commission regarding the suspension of trading are not supported by substantial evidence, (2) the findings of the Commission fail to provide any legal or factual basis to justify the trading suspensions, and (3) the trading suspensions are illegal in that Section 12(k) of the Securities Exchange Act of 1934, 15 U.S.C. 78 1(k), permits the Commission to suspend trading for a period not exceeding ten days whereas here trading has been suspended continuously for approximately one year.

2. This petition for review brings a controversy before this court which was the subject of a prior decision reported as *Sloan* v. *S.E.C.* 527 F. 2d 11 (3d Cir. 1976). In that case my petition for review was dismissed without prejudice on the basis that the S.E.C. was going to give me "some sort of hearing", after which judicial review might be sought. Following exchanges of correspondence and considerable delay, the S.E.C. made a final administrative determination on April 21, 1976, effective today, a copy of which is attached hereto and marked exhibit A. As the cover letter demonstrates, the S.E.C. has used its administrative determination as a basis for suspending trading in Canadian Javelin Ltd. from April 23, 1976 until May 2, 1976. This is clearly a final

order which is reviewable by this Court. This order was entered in response to my petition to the S.E.C. a copy of which is attached hereto and marked appendix F.

3. I am proceeding via an order to show cause and am requesting immediate review by this court because otherwise review of the trading suspensions in question will be an act of futility. The last time I presented this question to this court, the specific suspension orders I was protesting had long since expired by the time briefs were held. This led the S.E.C. to contend that my petition for review was moot and that I had failed to exhaust my administrative remedies with respect to the orders which were then current. At the present time, however, the S.E.C. can make neither objection. On the other hand, if this court does not act expeditiously, the current order will expire on May 2, 1976 and after that date the S.E.C. will no doubt make the same argument which permitted it to prevail previously. In short, if an order to show cause is not signed under the unique circumstances present here, effective judicial review of ten day suspension orders will never be possible.

4. Moreover, it is clear that the suspension orders must be set aside. As I understand the S.E.C.'s decision, the trading suspension of Canadian Javelin Ltd. is based upon the following:

(1) The common stock of Canadian Javelin Ltd. "may have been" artificially manipulated on two Canadian stock exchanges and the Commission is investigating possible manipulation of the stock.

(2) Canadian regulatory authorities have not provided information covering their pending investigation.

(3) A number of suits are pending against Canadian Javelin Ltd. in Canada.

(4) A new board of directors has recently been installed and this is the subject of a pending appeal in Canada.

(5) Since March 31, 1976, Canadian Javelin Ltd. has failed to file its 10-K report.

5. I believe it is plainly apparent that none of these reasons justify a trading suspension. The S.E.C. has recently undertaken highly publicized investigations of Lockheed Aircraft, Boeing and numerous other major cor-

porations and yet has not suspended trading in the stock of any of these corporations. As to the investigation by the Canadian regulatory authorities, the Montreal Stock Exchange, which is much closer to the action than the S.E.C., continues to permit Canadian Javelin Ltd. to trade there. As to the pending suits, Canadian Javelin Ltd. has been buried in litigation for at least 30 years and this has never previously provided the basis for a trading suspension. Finally, concerning the alleged March 31, 1976 delequent filing, it is far from clear that a Canadian corporation is required to file reports with the S.E.C. and in any event it is self-evident that the S.E.C.'s reference to this recent delinquency is nothing more than an excuse since the S.E.C. does not deny that at the time I filed my petition, which the S.E.C. states it received on March 11, 1976, Canadian Javelin Ltd. was current in its filings with the S.E.C. and trading was then suspended nevertheless.

6. I believe that the S.E.C. cannot be permitted to order a suspension trading, with severe interference with the property rights of innocent investors, on the flimsy basis asserted here. Moreover, since the S.E.C.'s "findings", such as they are, are based primarily upon rumor and innuendo rather than upon facts, they clearly cannot be supported by "substantial evidence" and hence must be set aside. Finally, the trading suspension here is plainly illegal in view of the language of Section 12(k) of the Securities Act.

7. I believe that in view of these circumstances, the order to show cause should be signed and the matter set down for immediate resolution. Since the S.E.C. and I both filed briefs on the merits and presented all revelant legal arguments in my previous petition, I believe that this court could well dispose of the usual requirement that briefs be filed. In any event, I am prepared to adhere to any briefing schedule, however short, since I can write a brief on these issues in a few hours. I believe, however, that the S.E.C. should be required to file the record forthwith since, if the S.E.C. is permitted to take the full 40 days permitted it by the rules, the order complained of by then will have expired. I also request that the suspension order be stayed in accordance with Section 25(c)(2) of the Securities Exchange Act, 15 U.S.C. 78 y (c)(3), as necessary to preserve my "status"

and "rights" and to prevent further irreparable harm to me.

WHEREFORE, I respectfully pray that my request for an order to show cause be granted.

/s/ Samuel H. Sloan
SAMUEL H. SLOAN

Sworn to before me this 23rd day of April, 1976.

/s/
Notary Public

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Samuel H. Sloan, Petitioner, v. Securities and Exchange Commission, Respondent.	Ca. No. 76-4110

MOTION FOR EXTENSION OF TIME TO FILE ANSWERING BRIEF

Under the rules of this Court the Commission's answering brief in the above case is due today. This Court is respectfully requested to grant an extension until October 7, 1976, for filing of the Commission's brief.

The additional time is needed because there has been an extensive amount of litigation in the Commission's Office of the General Counsel during the past few months. The attorney assigned to prepare the initial draft of the brief in this case has been involved in numerous other appellate matters, including the preparation of the Commission's brief, as appellee, in this Court's No. 75-4087, which answered a brief by the petitioner herein of some 111 pages.

The Commission intends shortly to file a motion to dismiss this appeal as moot. Should this Court agree with the Commission that the appeal is moot, it will be unnecessary for any brief on the merits to be filed by the Commission.

Respectfully submitted,
/s/ David Ferber
DAVID FERBER
Solicitor to the Commission

Securities and Exchange Commission
Washington, D.C. 20549

August 26, 1976

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

Samuel H. Sloan, Petitioner, v. Securities and Exchange Commission, Respondent.	No. 76-4110

APPELLEE'S MOTION TO DISMISS THE APPEAL ON GROUND OF MOOTNESS

Appellee, the Securities and Exchange Commission, respectfully requests that this court enter an order dismissing the instant appeal on the ground that the case has become moot, as appears from the accompanying memorandum and the attached certificate of Charles A. Moore, the Records Officer of the Securities and Exchange Commission.

Should this motion be denied, appellee also requests that the Court extend the time for filing appellee's brief until thirty days thereafter.

Respectfully submitted,
/s/ DAVID FERBER
David Ferber
Solicitor to the Commission

Securities and Exchange Commission
Washington, D. C. 20549

September 15, 1976

SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

Solicitor
to the Commission

September 15, 1976

A. Daniel Fusaro, Clerk
United States Court of Appeals
for the Second Circuit
United States Courthouse
Foley Square
New York, N. Y. 10007

Re: *Samuel H. Sloan* v. *Securities and Exchange Commission*, C.A. 2, No. 76-4110

Dear Mr. Fusaro:

Enclosed is a Motion to Dismiss this Appeal on the Ground of Mootness and Memorandum in Support of that Motion. Copies of the Motion are being served by mail on Mr. Sloan at 1761 Eastburne Avenue, Apartment 5A, Bronx, New York 10457.

As we indicate in the motion, we have also moved that should the motion to dismiss be denied that the Court extend the time for filing of Appellee's brief until thirty days thereafter.

This case has been set for argument on October 13, 1976.

We direct your attention to the fact that another case involving the same two parties, *Samuel H. Sloan* v. *Securities and Exchange Commission, et al.*, No. 75-4087, also has been set for argument on October 13, 1976. Is it possible that the enclosed Motion to Dismiss in 76-4110 be heard on the same date as the oral argument on 75-4087, and that any argument on the merits on 76-4110 be postponed if this Court disagrees with us as to the mootness of this case?

Very truly yours,
/s/ David Ferber
DAVID FERBER
Solicitor

Enclosures

76-4110
B 38

UNITED STATES COURT OF APPEALS

Second Circuit

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Court House, in the City of New York, on the 23rd day of September, one thousand nine hundred and seventy-six.

Samuel H. Sloan,
Petitioner,
v.
Securities and Exchange Commission,
Respondent.

It is hereby ordered that the motion made herein by counsel for the appellee dated September 15, 1976 to dismiss the petition for review on the ground of mootness is set down for oral argument on October 13; respondent's motion for an extension of time within which to file his brief be and it hereby is DENIED.

It is further ordered that

/s/ Harold R. Medina
/s/ Robert P. Anderson
/s/ Murray I. Gurfein

Circuit Judges

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL H. SLOAN, PETITIONER, —against— SECURITIES AND EXCHANGE COMMISSION, RESPONDENT.	No. 76-4110 *AFFIDAVIT IN OPPOSITION TO MOTION OF THE SECURITIES AND EXCHANGE COMMISSION TO DISMISS THIS APPEAL AS MOOT*

STATE OF NEW YORK
COUNTY OF NEW YORK ss:

Samuel H. Sloan, being duly sworn, deposes and says:

1. I make this affidavit in opposition to the motion of the Securities & Exchange Commission ("S.E.C.") dated September 15, 1976 to dismiss this appeal as moot. This motion has so little merit that it hardly warrants a detailed discussion. Moreover, pages 47-50 of the brief I have filed analyze the law of mootness in detail as it relates to the specific facts of this case and demonstrate that this case is not moot for any one of a number of reasons. In addition, this Court has a firm policy against deciding appeals on a piecemeal basis. If the S.E.C. wants to argue that this case is moot, it has every opportunity to do so by filing a brief which sets forth whatever arguments the S.E.C. might wish to make. Therefore, I believe that this motion should be denied.

2. In this proceeding, I perfected the appeal by filing a 50 page brief and a 122 page appendix. Thereafter, the S.E.C. filed a motion to extend its time to file a brief and stated that additional time was needed because of its involvement in other litigation. I did not oppose the S.E.C.'s motion for an extension of time. The motion was granted and a scheduling order was entered which gave the S.E.C. until October 1, 1976, or more than 60 days after I had served my brief, to file its brief. Orai argument has since been scheduled for October 13, 1976 which has also been set as the date for the argument of another proceeding involving myself and the S.E.C.

3. It is significant to note that the S.E.C. filed its motion only a little more than two weeks before its brief was due. The motion is accompanied by a seven page memorandum which argues that this proceeding, which has been pending since April 23, 1976, should be dismissed as moot because of something which happened on May 2, 1976. The S.E.C.'s motion states that: "Should this motion be denied, appellee also requests that the Court extend the time for filing appellee's brief until thirty days thereafter."

4. The S.E.C.'s motion to dismiss this appeal as moot is accompanied in addition by a one page letter to the Clerk of the Court which asks whether the motion to dismiss can be heard on October 13, 1976 and whether the argument on the merits can be postponed until some later date "if the Court disagrees with us as to the mootness of this case." From this it is apparent that the S.E.C. has no present intention of complying with this Court's scheduling order, entered after this Court granted the S.E.C.'s motion to extend its time to file a brief, which directs the S.E.C. to file its brief on or before October 1, 1976. Therefore, a timely respondent's brief will definitely not be filed in this case unless this Court takes some action prior to October 1, 1976 or unless the S.E.C. receives a telephone call or a letter from someone in the clerk's office advising it to file a brief. Moreover, even if one of these latter things occurs, it seems certain that the S.E.C. will then claim that it is under such short notice that it will not be able to file a brief by October 1, 1976 or perhaps even by October 13, 1976. In short, the S.E.C., by filing the motion to dismiss this appeal at this late date, has purposefully created the possibility that this appeal will be argued and decided without this Court having had the benefit of a brief from the S.E.C.

5. In order to be sure that I understood correctly what the S.E.C. had done and what it now intends to do, I called the S.E.C. attorney assigned to handle this case, Mr. Frederick B. Wade, and expressed the views which I have just set forth. He did not state any disagreement. Frankly, I believe that in the context of prior events the tactics of the S.E.C. as evidenced by this motion are reprehensible and, as I pointed out in my telephone call to Mr. Wade, it is obvious that no private litigant would take a chance by doing what the S.E.C. has done here. Clearly, the S.E.C. is relying

upon the largess of this Court to grant it latitude which probably would not be accorded to a private party. It is noteworthy that the actions of the S.E.C. are similar to those it took in a prior case between these same parties before this Court. In *S.E.C.* v *Sloan*, Dkt. No. 75-6106, which resulted in a decision reported as *S.E.C.* v. *Sloan*, 535 F. 2d 679 (2d Cir. 1976). the oral argument was scheduled for April 27, 1976 and the parties were notified well in advance of that date. As here, the S.E.C. waited until almost the last possible moment and then filed a motion dated April 14, 1976 to dismiss that appeal as moot. At the conclusion of its two page motion, the S.E.C. stated:

> "The Commission asks that this motion be considered without oral argument and, if a decision on this motion is not reached prior to the date set for oral argument, April 27, 1976, the Commission urges that this Court decide the appeal without oral argument by the Commission."

6. A few days prior to the argument date of April 27, 1976, I received a call from Mr. John Brascia, an employee in the clerk's office of the Court of Appeals, who informed me that he had just made a telephone call to the office of General Counsel of the S.E.C. and had told the attorney there assigned to this case that the Court would be hearing argument on April 27, 1976 and was requesting that the S.E.C. send someone to argue the appeal. As the result of this unusual action, the S.E.C. did send an attorney, Michael J. Stewart, to argue the appeal. However, it turned out that Mr. Stewart's argument consisted of little more than a blustering, incoherent protest that the appeal was moot. After several pointed questions from the panel in an attempt to get Mr. Stewart to explain his position more clearly, Mr. Stewart admitted that he was not certain what orders I was appealing from. The panel then directed Mr. Stewart to go back to his office to find out what orders I was appealing from, and to write a letter to the Court that day explaining his position. The panel at the same time advised me that I would be given two days to write a letter in response to Mr. Stewart's letter. Thereupon, the oral argument of that appeal was concluded. Subsequently, Mr. Stewart wrote a letter to the Court and I wrote a letter to

the Court in accordance with the time schedule set by the panel.

7. It can be seen by comparing the decision which was ultimately rendered in that case with the various papers filed by the S.E.C. that the Court acted almost entirely *sua sponte*. For example, none of the authorities relied upon by the Court in making its decision were cited by the S.E.C. I pointed this fact out on page 5 of the petition for a rehearing and suggestion that the rehearing be in banc of that appeal which I filed and which is still pending.

8. I am reciting these facts here because I found the course of the proceedings there to be objectionable and it now appears that the S.E.C. is striving in a calculated way to do it again and to abort the normal and orderly procedures by which this Court resolves the many appeals which are filed each year. However, there is a major difference between the appeal just discussed and the instant case because there the S.E.C. did at least file a brief, although the S.E.C.'s brief was only seven pages long and was inadequate in numerous respects. Here the S.E.C. has not filed a brief and apparently has no plans to do so on or before October 1, 1976. Instead, the S.E.C. presumably expects this Court to lead it by the hand, as this Court did in the prior case, and thereby to give the S.E.C. flexibility as to what arguments it will present if and when it gets around to filing a brief. What the S.E.C. has stated that it wants this Court to do is to postpone the argument which has been scheduled for October 13, 1976 and instead to hear argument on that date solely on the motion and then, if the S.E.C. loses on the motion, to give the S.E.C. 30 days to file its brief in addition to the 60 days which has already been given and then to schedule a new oral argument which will presumably take place some time in 1977. All this is to be done solely to suit the convenience of the S.E.C. I believe that the requests of the S.E.C. should be rejected out of hand for a number of reasons.

9. To begin with, the motion to dismiss this appeal as moot is not filed in good faith. This case was before this Court previously and resulted in a decision reported as *Sloan* v. *S.E.C.*, 527 F. 2d 11 (2d Cir. 1975). There the S.E.C. twice attempted to have the appeal dismissed as moot and both times it was unsuccessful. First, the S.E.C.

filed a "suggestion" that the appeal be dismissed as moot. When the Court failed to act on that suggestion, the S.E.C. then filed a brief which argued on pages 12-13 thereof that: "The issues presented by the petition for review are moot." I then filed a reply brief which responded to the S.E.C.'s mootness arguments in detail. The opinion subsequently rendered by the Court did not discuss the S.E.C.'s claim that the case was moot and clearly the reason for this is that the argument that the case was moot was so entirely without merit as to not warrant judicial discussion. It is obvious that this Court could not have written the opinion it did had it agreed with the S.E.C. that the case was moot. This can be seen from the conclusion of the opinion where the Court stated: "We therefore dismiss Sloan's appeal but without prejudice to his repleading after an administrative hearing before the S.E.C., from which judicial review may be sought."

10. The concept of mootness was explained by the Supreme Court in *De Funis* v. *Odegaard*, 416 U.S. 312, 316-319 (1974). There the Court stated that when a case becomes moot it is because Article III of the United States Constitution deprives the federal courts of jurisdiction to decide anything other than an actual case or controversy. Thus, a case becomes moot when the courts cease to have jurisdiction to decide it. Since it is Hornbook law that a federal court must notice whether it has jurisdiction over a case before proceeding further, it is obvious that when the opinion of this Court stated that I would be given a further opportunity for judicial review by this Court of the S.E.C.'s suspension orders after an administrative hearing before the S.E.C., it was deciding that this Court has jurisdiction over the subject matter and accordingly was rejecting the S.E.C.'s claim that this case was moot. Lest there be any doubt that the claim that the S.E.C. is presenting here is identical in every material respect to that which was rejected by this Court in the past, it should be pointed out that most of the third paragraph of page 4 of the memorandum filed by the S.E.C. in support of this motion is copied word for word from the brief it filed when this case previously came before this Court, and most of the second paragraph of that page is copied from the S.E.C.'s brief in the appeal of *S.E.C.* v. *Sloan*, Dkt. No. 75-6106, where it

unsuccessfully claimed that that entire appeal was moot. Incidentally, in the first sentence of the second paragraph of page 4 of its memorandum, the S.E.C. again cites three cases which it cited in its brief in *S.E.C.* v. *Sloan*, Dkt. No. 75-6106. In that appeal, I filed a reply brief which pointed out that all three of these cases are wholly irrevelant and two of them do not even deal with mootness. Since it persists in citing these three cases, it is obvious that the S.E.C. is merely copying from its previous court filings and did not even bother to look up these cases prior to filing its memorandum in this Court. As I noted previously, none of the cases cited by the S.E.C. in *S.E.C.* v. *Sloan*, Dkt. No. 75-6106, were relied upon by this Court when it made its decision in that appeal.

11. From this it is apparent that the law of this case and of this Circuit is that this appeal is not moot. It is further apparent that the motion to dismiss this appeal as moot is nothing more than a bad faith delaying tactic. Of course, in a matter so fundamental as jurisdiction, it is always possible that this Court could change its prior rulings. However, the point here is that the S.E.C. attorneys who filed the instant motion to dismiss this appeal as moot must realize that they are proceeding on thin legal ground and nevertheless they have failed to file a brief and apparently do not intend to comply with this Court's scheduling order directing them to file a brief on or before October 1, 1976.

12. It should be pointed out that the motion to dismiss this appeal as moot states nothing which could not more appropriately be said in a brief. No affidavit has been filed in support of the motion. The seven page memorandum of the S.E.C. sets forth three pages of what it says are "facts in support of the motion." However, this statement of the facts is neither accurate nor complete and is premised in part on speculation and matters not in the record. To pick one example, page 2 of the memorandum of the S.E.C. contains the following sentence: "In April, 1975, the Commission received information from Canadian authorities that a criminal investigation of CJL was pending."

13. It should be noted that in the memorandum of the S.E.C. no citation is given either to the record or to any other document in support of this statement. Moreover, on pages 12-14 of my brief I discuss the assertion by the S.E.C.

that it received unspecified information from unspecified Canadian authorities that an investigation was pending in Canada concerning what was believed to have been a manipulation of Canadian Javelin Ltd. stock. I conclude that there is no evidence, substantial or otherwise and in the record or elsewhere, that this occurred. From this it is clear that there is disagreement between the S.E.C. attorneys and myself as to the relevant and material facts of this case. One of my objections is that the "informational memorandums" which the S.E.C. has included in the record of this case and which ostensibly state the reasons for the trading suspensions, refer to a "public announcement" by the Royal Canadian Mounted Police. Since this "public announcement" was supposedly the cause of the trading suspension which lasted for more than one year, it is of great importance that it be included in the record of this case assuming, of course, that this public announcement exists and is not the product of the imagination of some S.E.C. employee. Since I frankly doubt that there ever was a public announcement, I inquired of the S.E.C. about this matter and ultimately I wrote a letter a copy of which is annexed hereto and marked Exhibit A. This letter speaks for itself. The point is that what is involved here is a factual dispute. Clearly, the proper way to present this case to this Court is not to file a motion to dismiss the appeal as moot based upon unsworn statements asserting facts which are the subjects of dispute but rather to file a brief answering the arguments which I have set forth and stating such relevant facts as the S.E.C. contends are supported by substantial evidence in the record.

14. The only facts which can be found from the papers which accompany the S.E.C.'s motion to dismiss this appeal as moot are that:

> "An order dated April 21, 1976 was issued ..... suspending trading of securities ..... of Canadian Javelin Limited ..... covering the period April 21, 1976 through May 2, 1976, inclusive, and that no further orders suspending trading of securities of Canadian Javelin Ltd. have been issued...."

15. The reason these facts can be found is that included in the motion of the S.E.C. is an attestation of Charles A. Moore, Records Officer of the S.E.C., which states that this is the case. However, this attestation is unnecessary since all suspension orders, like other orders of the S.E.C., are published in the Federal Register following their issuance. Suspension orders are also reported in the S.E.C. News Digest, the New York Law Journal and the Wall Street Journal. However, it is interesting to note that the attestation filed by the S.E.C. is incorrect. The order of the S.E.C. dated April 21, 1976 suspended trading from April 23, 1976 until May 2, 1976 rather than from April 21, 1976 until May 2, 1976. This can be seen from reading the order itself which can be found on pages A-86 to A-87 of the appendix I have filed.

16. On pages 47-50 of my brief, I anticipate the S.E.C.'s argument that this appeal is moot and I cite cases which demonstrate that this is not correct. It would not be appropriate in this affidavit for me to repeat or restate everything I say in my brief and moreover, since I believe that the S.E.C.'s mootness argument is based upon an incomplete and inaccurate statement of the facts and that this will become apparent when and if the S.E.C. files a proper brief, I think I should not respond in detail to everything the S.E.C. says. However, certain things which the S.E.C. states should not go unanswered. For one thing, page 6 of the S.E.C.'s memorandum quotes a part of a sentence from the decision of the Supreme Court in *Sibron* v. *New York*, 392 U.S. 40, 57 (1968). By quoting out of context, the S.E.C. makes it appear that the Supreme Court was stating something considerably different from what it actually said. What the Supreme Court actually said was that in order for the government to demonstrate that an appeal from a criminal conviction is moot, it must satisfy the burden of showing that there is no possibility that any collateral legal consequences will be imposed on the basis of the challenged conviction. The analysis which the Supreme Court made in reaching this conclusion was that while an earlier decision, *St. Pierre* v. *United States*, 319 U.S. 41 (1943), had "implied that the burden was upon the convict to show the existence of collateral legal consequences," 392 U.S. at 54, the Supreme Court was now deciding, in the sentence from which the S.E.C. quotes in its memorandum, that the burden was on the government and not on the convict.

17. I would like to point out that in *Sibron* the Supreme Court held that the case was not moot for each of two separate and distinct reasons. The first reason is set forth on pages 51-53 and the second on pages 53-58 of the court's opinion. Since on page 50 of my brief I refer to pages 51-53 of the Supreme Court's opinion, it is obvious that I am referring to the first reason given by the court which is that where it is physically impossible to present an appeal from a criminal conviction to an appellate court prior to the time the sentence has expired, which is normally the situation when a short sentence is imposed and bail pending appeal is denied, the case does not become moot with the expiration of the sentence. The Supreme Court, in explaining its reasoning stated:

> "We do not believe that the Constitution contemplates that people deprived of constitutional rights at this level should be left utterly remediless and defenseless against repetitions of unconstitutional conduct." 392 U.S. at 52-53.

18. That principle clearly applies in the case at bar. The April 21, 1976 order of the S.E.C. suspended trading in Canadian Javelin Ltd. for a ten day period starting on April 23, 1976 and terminating on May 2, 1976. I could not have sought judicial review of this order earlier than I did, because I filed my petition for review on April 23, 1976, the first day the order was in effect. I also simultaneously filed a motion for an order to show cause, a stay of the S.E.C.'s suspension order and an immediate or expedited judicial review. However, ten days passed and the order expired without any action being taken on my motion. In any event, irrespective of the filing of my motion or the determination this Court might have reached or might reach were this case to arise in the future, Section 25(a)(2) of the Securities Exchange Act of 1934, 15 U.S.C. 78y(a)(2), and Rule 17(a) of the Fed. R. App. P. gives the S.E.C. 40 days to file the record. Since in this and other related cases the S.E.C. has been unwilling to file the record prior to the last allowable date, it is clear that court review of the April 21, 1976 suspension order could not have been had by May 2, 1976, the date the order expired. Therefore, under the principle set forth in *Sibron* v. *New York, supra,* 392 U.S. at 51-53, this appeal is clearly not moot.

19. The memorandum filed by the S.E.C. in support of its motion to dismiss this appeal as moot quotes part of a sentence from the second reason the Supreme Court gave in holding that case not to be moot. There the Supreme Court ruled that an appeal in a criminal case could not become moot unless there was no possibility that collateral legal consequences could arise as a result of the challenged conviction. The memorandum filed by the S.E.C. argues that none of the examples of collateral consequences which the Supreme Court gave in the criminal case of *Sibron* apply in this case which involves administrative suspension orders and therefore the instant appeal is moot. However, my brief demonstrates that there are several collateral legal consequences which have arisen and will continue to arise as a result of the challenged suspension orders and I think I should set forth them in this affidavit.

20. Although the most recent order suspending trading in Canadian Javelin Ltd. expired on May 2, 1976, trading in the securities of that corporation has not resumed as a direct collateral legal consequence of the S.E.C.'s suspension orders. As a result, I as well as other stockholders and persons who wish to buy or sell shares of Canadian Javelin Ltd. are no better off now than we were when the suspension was still in effect. The reason for this is explained on page 49 of my brief. There, I state that the S.E.C. has been able to prevent any resumption of trading in Canadian Javelin Ltd. through the operation of S.E.C. Rule 15c 2-11, 17 CFR 240.15c 2-11. This rule is lengthy, convolved, contains numerous exceptions and may be waived at the discretion of the S.E.C. The rule is not conducive to adequate summarization. However, it can be seen from subsection (f)(3) of Rule 15c2-11 that whenever a security has not been the subject of a bid and asked quotation for more than four business days in succession, which is the case whenever trading is suspended for ten days by the S.E.C., the security may not be quoted in the pink sheets or in any other quotation medium unless, with certain exceptions, the issuer of the security has on file with the S.E.C. a registration statement or similar document which is currently in effect. Since Canadian Javelin Ltd. does not have on file with the S.E.C. a registration statement or similar document which is currently in effect and since none of the exceptions set forth in

Rule 15c2-11 seem to apply, the result is that a collateral consequence of the S.E.C.'s suspension order is that the securities of Canadian Javelin Ltd. cannot be quoted and therefore cannot be traded in the United States. Of course, the S.E.C. might argue that even if the S.E.C.'s orders suspending trading in Canadian Javelin Ltd. were set aside or held to be invalid on constitutional, statutory, or factual grounds, that would not insure a resumption of trading since, for example, no broker or dealer might come forward who was willing to trade in Canadian Javelin Ltd. However, this argument would be refuted by the teaching of *Sibron* v. *New York, supra,* 392 U.S. at 57, which is that the burden is on the government to show that no possible collateral legal consequences could arise as a result of the challenged orders. Here, the government, in this case the S.E.C., has not attempted to and clearly could not meet that burden particularly since when it terminated the trading suspension it issued a press release containing "cautionary language reminding brokers of their responsibilities pursuant to Rule 15c2-11," see appendix p. A-78, which had the effect of warning brokers not to trade the securities of Canadian Javelin Ltd.

21. Going further on the point of collateral legal consequences, it should be said that if I win this case it will probably be because this Court agrees with me that practice of the S.E.C. of summarily suspending trading in a security for an indefinite period of time is illegal and/or unconstitutional and that the suspension orders issued by the S.E.C. were therefore invalid. Such a ruling would, in my opinion, have the collateral consequence of requiring the reversal of other rulings by the S.E.C. and of other decisions favorable to the S.E.C. in its litigation against me. In a case entitled *S.E.C.* v. *Sloan*, 74 Civil 5729, the S.E.C. filed a complaint asking that I be enjoined from violating Rule 15c 2-11. In an affidavit filed by the S.E.C. simultaneous with the commencement of that action, Ira Spindler, an S.E.C. employee, stated that I had submitted applications "to quote the shares of Franklin New York Corp. ('Franklin') and Triex International Corp. ('Triex'). Each of these issues had been suspended from trading in the over-the-counter market by the Commission." Based upon the assertion that I was seeking to quote securities which had previously been

suspended from trading by the S.E.C., the S.E.C. requested and obtained a preliminary injunction in the district court. My appeal to this Court from that preliminary injunction was assigned Dkt. No. 75-7056 and was dismissed on January 7, 1976. A petition for a writ of certiorari is presently pending under Dkt. No. 76-365. Meanwhile, the S.E.C. has cited the preliminary injunction as a basis for revoking my broker dealer registration and for barring me from being associated with any broker or dealer. My petition to review that decision has been set for argument on October 13, 1976. Since the affidavit of Spindler upon which the preliminary injunction was based states that the suspensions of both Franklin New York Corp. and Triex International Corp. lasted for a period of more than ten days, see paragraph 7 of page 23 of the appendix filed in Dkt. No. 75-7056, it follows that if the Canadian Javelin Ltd. suspension orders are declared to have been illegal and invalid, for the same reason the Franklin New York Corp. and Triex International Corp. suspension orders were illegal and invalid and therefore the S.E.C. was not entitled to a preliminary injunction and therefore the order of the S.E.C. revoking my broker dealer registration and barring me from being associated with any broker or dealer must be set aside.

22. The same can be said for another injunction obtained by the S.E.C. after a decision reported as *S.E.C.* v. *Samuel H. Sloan*, 369 F. Supp. 996 (S.D.N.Y. 1974). In paragraphs 28 and 29 of that decision, the court found that I did not meet the S.E.C.'s net capital requirement on May 24, 1973 and again on August 2, 1973. See 369 F. Supp. at 1001. These two findings of fact were referred to specifically in footnote 19 of the administrative decision of the S.E.C. which revoked my broker dealer registration and barred me from being associated with any broker or dealer. An examination of the record of that case, from which an appeal was also dismissed on January 7, 1976, will show that in computing my net capital for May 24, 1973 and for August 2, 1973, the S.E.C. deducted $11,000 as representing fails to deliver in a suspended security, namely Triex International Corp. The S.E.C. justified this deduction by a Securities Exchange Act Release dated June 8, 1973 in which the S.E.C. newly interpreted its net capital rule, S.E.C. Rule 15c3-1, 17 CFR 240.15c 3-1, as authorizing a deduction, in

computing the net capital of a broker or dealer, of the gross dollar amount of all fails to delivers in suspended securities. It is apparent that had there been no suspension in Triex International Corp., the S.E.C. would not have been justified in deducting $11,000 from my net capital on May 24, 1973 and again on August 2, 1973 and I would have been found to be in compliance with the S.E.C.'s net capital rule certainly on the first of those two dates. In addition, the S.E.C.'s net capital computation for August 2, 1973 contains an error in that it is premised upon the assumption that the minimum required net capital was $15,000 whereas in fact the S.E.C. issued Securities Exchange Act Release date July 30, 1973 which stated that a broker such as myself who did not hold cash or securities for the benefit of public customers was only required to maintain a minimum net capital of $5,000. Thus, the finding made in paragraph 29 of the court's decision that I had a net capital deficiency of $20,046 on August 2, 1973 was overstated by $10,000 and therefore if a court were to hold that the $11,000 deduction for fails to deliver in a suspended security was wrong, then the finding of paragraph 29 of the district court's decision would have to be set aside. This in turn could lead to reversal of the court's decision which in turn would require the setting aside of the S.E.C.'s administrative order revoking my broker dealer registration and barring me from being associated with any broker dealer inasmuch as that order was based in part upon the decision.

23. From all this, it is apparent that the S.E.C. could never sustain its burden of showing that no collateral legal consequences could possibly flow from a resolution of this appeal favorable to me. Moreover, even if the S.E.C. could make such a showing, it would still have to demonstrate that the many other principles governing mootness which I have set forth on pages 47-50 of my brief do not apply here. For example, the S.E.C. would have to show that this case can be distinguished from that of *Southern Pacific Terminal* v. *ICC*, 219 U.S. 498, 515 (1911) where the Supreme Court held that an appeal from a "short term order" which expired before the case was heard was not moot because otherwise the order would be "capable of repetition, yet evading review." In addition, the S.E.C. would have to demonstrate that its mootness claim is not defeated by the principle set forth in *United States* v. *W. T. Grant Co.*, 345 U.S. 312, 317

(1953) that "a voluntary cessation of allegedly illegal conduct does not make the controversy moot." The memorandum of the S.E.C. argues that this principle applies "only in cases where the allegedly illegal conduct is likely to be repeated." Although I disagree with that statement, the fact is that the allegedly illegal conduct has been repeated. The S.E.C. often issues new suspension orders and many are in effect as of this writing. Although these suspension orders have of late not prohibited trading in the securities of Canadian Javelin Ltd., there is no difference in form and substance between them and those which are being challenged in this petition for review. Each suspension order lasts for a period of ten days and then it expires by its terms. However, the S.E.C. often "continues" a suspension beyond the ten day period authorized by statute by issuing a series of ten day suspension orders. I am challenging the legality of this practice in this appeal. The motion papers of the S.E.C. imply that the question which I am raising has become moot because the allegedly illegal practice has terminated. However, this is not true since the S.E.C. has suspended trading in the securities of Equity Funding Corp., now known as Orion Capital Corp., for successive ten day periods from March 28, 1973 to the present. Clearly, if the S.E.C. succeeds in its mootness argument it will be able to continue to issue new suspension orders without ever having the legality of this practice passed upon by a court due to the fact that each order expires after ten days. Under these circumstances, this court cannot declare this case to be moot.

24. I would like to point out that by filing its motion to dismiss this appeal as moot, the S.E.C. has complicated matters in an additional way. Through a Freedom of Information Act request, I have obtained access to what should be all the files and records of the S.E.C. pertaining to the investigation and suspension of trading in Canadian Javelin Ltd. Since, when this case last came before this Court, the resulting decision stated that the record was "insurmountably sparse" and that therefore the appeal would be "dismissed without prejudice," I have hoped to amplify the record and to keep this from happening again by obtaining a stipulation from the S.E.C. to include various documents I found in the files of the S.E.C. as part of the record. See Fed. R. App.P. 17(b). With this objective in mind, I wrote

a letter to the S.E.C. dated August 2, 1976, a copy of which is annexed hereto and marked Exhibit A. The S.E.C. has not replied in writing to my letter. However, the Office of General Counsel of the S.E.C. has told me by telephone that the S.E.C. is unprepared to discuss the possibility of including additional documents in the record by stipulation until the instant motion to dismiss the appeal is decided. This, of course, places me in a difficult position and demonstrates one undesirable consequence of the delay caused by this motion.

25. For all of the foregoing reasons, the motion to dismiss this appeal as moot must be denied.

New York
New York

/s/ Samuel H. Sloan
SAMUEL H. SLOAN

Sworn to before me this
24th day of September, 1976

James J. Berry
Notary Public

State of New York
No. 41-5301550
Qualified in Suffolk County
Commission Expires March 30, 1978

1761 Eastburn Avenue Apt. A5
Bronx, New York 10457
(212) 299-2095

August 2, 1976

Frederick B. Wade
Securities & Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: *Sloan* v. *S.E.C.*, 2d Cir. Dkt. No. 76-4110

Dear Mr. Wade:

Enclosed please find a copy of the material which I have asked that you agree by stipulation to be included in the record of this appeal. All of this material was copied directly from the files of the S.E.C. pursuant to the granting of a Freedom of Information Act request. There are about 337 pages in all. Since this is only a fraction of the total material provided to me I wish to put in a few words of explanation.

In a letter dated June 2, 1975, I requested, pursuant to the Freedom of Information Act, 5 U.S.C. 552, a variety of documents including, *inter alia*, all files and records pertaining to the investigation and suspension of trading in Canadian Javelin Ltd. See FOIA Request No. #216. As I understand it, a letter from the S.E.C. dated October 31, 1975 granted my request in full except that I was not to be provided with "inter and intra-agency memoranda which reflect discussions between or consideration by members of the Commission or members of its staff, or both, of any action taken or proposed to be taken by the Commission or by any member of its staff."

It seems to me, therefore, that the material which the S.E.C. agreed to provide to me would include any and all evidence assembled by the S.E.C. which might justify a trading suspension. If you disagree I would appreciate being advised as to your views on this point.

When I went to Washington, D.C. to see the documents which were being made available to me, I was shown two cartons of material relating to Canadian Javelin Ltd. However, the bulk of the material related to the 1958-1963 period which time Canadian Javelin Ltd. was initially blacklisted

by the S.E.C. and later was sued civilly by the S.E.C. and by private parties. Nevertheless, I did find two files of relatively recent material by which I mean material relating to periods in which trading in Canadian Javelin Ltd. was suspended by the S.E.C. I ordered from Disclosure, Inc. a copy of all of the material contained in these two files.

This material has now arrived. There are 558 pages in all. I have gone through this material thoroughly and have determined that the aforementioned 337 pages provide useful information. I therefore request that these pages be included in the record.

I realize that the relevance of some of this material might be obscure. However, I have studied the affairs of Canadian Javelin Ltd. as well as litigation brought by the S.E.C. at length and reading these documents has answered many questions which existed in my mind. I can perceive no objection to the inclusion of these documents in the record. All of these documents were taken from the files of the S.E.C. and surely, in a case such as this, the S.E.C. should not be given the arbitrary power to control the contents of the record.

I would like to point out that the most recently dated document in the material I am sending you is a letter received by the S.E.C. on February 6, 1975. This fact has led me to the conclusion that either more recent material does not exist or, for one reason or another, the S.E.C. has not chosen to make it available to me. I request that you advise me as to what the true state of affairs is so that I may proceed accordingly.

My own analysis of the documents which are already part of the record which has been filed in the Court of Appeals leads me to the conclusion that the investigation which the S.E.C. staff says that it started in April, 1975 never really got off the ground since the officers of Canadian Javelin Ltd. all refused to cooperate with the S.E.C. This lends support to the conclusion that these files of the S.E.C. may well contain nothing more recent than February, 1975. If this conclusion is correct then it would support the position I have taken in my brief to the Court of Appeals.

One matter of primary interest to me is the "public announcement" which, according to the S.E.C. memorandums in the record, was made by the Royal Canadian Mounted Police on or about April 29, 1975. When I dis-

cussed this matter with you previously on the telephone, you referred me to an article in the April 30, 1975, *Wall Street Journal*. I have since read the article and have found that it does not contain the public announcement. Frankly, I am inclined to doubt if there ever was a public announcement.

Could you please provide me with a copy of this public announcement or at least clear up the question as to whether it exists? In view of the fact that the existence or lack thereof of this public announcement is clearly critical to the outcome of this case, I ask that a copy of it, if one can be located, be included in the record filed in the Court of Appeals. If the announcement was oral, I request that a sworn statement of what this announcement said be provided.

Finally, I request that the record filed in the Court of Appeals be modified to include an unexpurged version of all the documents which you have thus far filed. I note that many of the informational memorandums which make up the record contain heavy black marks through sections which the S.E.C. apparently does not want either me or the judges of the Court of Appeals to be able to read. Since these memorandums purport to provide the explanation for final agency decisions, they must be made available in full. See *NLRB* v *Sears, Roebuck & Co.*, 421 U.S. 132, 155-158 (1975).

Very truly yours,
/s/ Samuel H. Sloan
SAMUEL H. SLOAN

Anda Baumanis being duly sworn deposes and says that she is not a party to this action, is over 21 years of age and resides at 243 West 99th Street, New York, New York 10025; and on September 24, 1976 she served the within affidavit by mailing a true copy of same to:

Frederick B. Wade
Securities & Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

/s/ Anda Baumanis
ANDA BAUMANIS
/s/ Anda Baumanis

New York
New York

Sworn to before me this
24th day of September, 1976

JAMES J. BERRY
NOTARY PUBLIC

JAMES J. BERRY
Notary Public, State of New York
No. 41-5301550
Qualified in Suffolk County
Commission Expires March 30, 1978

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SAMUEL H. SLOAN, Petitioner, —against— SECURITIES & EXCHANGE COMMISSION, Respondent.	76-4110 *SUPPLEMENTAL AFFIDAVIT IN OPPOSITION TO MOTION TO DISMISS THIS APPEAL*

STATE OF NEW YORK }
COUNTY OF NEW YORK } SS:

SAMUEL H. SLOAN, being duly sworn, deposes and says:

1. I make this supplemental affidavit in opposition to a motion by the Securities & Exchange Commission ("S.E.C.") to dismiss this appeal as moot. However, I first wish to demonstrate the incorrectness of certain statements made by the S.E.C. in its recently filed brief. Annexed hereto as Exhibit A are Wall Street Journal articles dated April 30, 1975 and December 21, 1972 which I cited on pages 14 and 30 of my brief. Annexed hereto as Exhibit B is a proxy statement notifying interested persons of a special general meeting of shareholders of Canadian Javelin Ltd. for July 30, 1976 which I discuss on page 29 of my brief. This proxy statement was prepared by a court appointed barrister under the direction and supervision of Quebec Superior Court Justice Rejane J. Colas after she rendered a judgment, set forth on pages 3-9 of the proxy statement, which ordered a special meeting of shareholders which complied "as far as practicable" with S.E.C. regulations. See proxy statement p. 5. Of particular interest in this proxy statement is the discussion on pages 28-31 thereof regarding (1) a criminal information released in Canada on March 8, 1976 containing 406 charges of wash trading in the shares of Canadian Javelin Ltd. on the part of John C. Doyle and four others, (2) the concurrent trading suspension of Canadian Javelin Ltd. in the United States, and (3) a civil suit instituted by the S.E.C. on April 26, 1976 in the Southern District of New York against John C. Doyle,

four individuals and four corporations. It can be observed that the individuals named in the criminal information in Canada are identical to the individuals named in the civil suit in the United States and the two actions make parallel charges of wash trading. Thus a statement made on page 5 of the S.E.C.'s brief is misleading. The S.E.C. claims that its own investigation led to the filing of its civil action. In effect, it gives itself credit for developing the information which led to the bringing of the charges. However, the facts clearly demonstrate that it was the Canadian authorities who did the investigative work and the S.E.C. merely copied the Canadian charges in bringing its own civil suit.

2. In moving to dismiss this appeal as moot, the S.E.C. asks this Court apply a non-existant legal standard. Page 15 of the S.E.C.'s brief contends that the holding by the United States Supreme Court in *United States* v *W. T. Grant Co.*, 345 U.S. 629, 632 (1953), which was that voluntary cessation by the defendant of the allegedly illegal conduct does not make a case moot, was limited by *S.E.C.* v *Medical Committee for Human Rights*, 404 U.S. 403, 406 (1972) to apply only in cases where the allegedly illegal conduct is likely to be repeated. However, this is not correct. In *Mancusi* v *Stubbs*, 408 U.S. 204, 206 n. 1 (1972) the Supreme Court elaborated on the latter holding by stating that that case had become moot:

> "not because of compliance by the S.E.C. with the judgment under review, but because of the action of Dow Chemical which was not required to do anything by that judgment."

3. Thus, it is clear that the holding in *Medical Committee* is not helpful to the S.E.C. here. In the case presented there, the allegedly illegal conduct was a violation of the S.E.C.'s proxy rules by Dow Chemical, which was not a party to the proceeding. No allegation was made of illegal conduct on the part of the S.E.C. In fact, the S.E.C. did not ask and, in view of the lower court's ruling, which still stands as precedent, did not want the Supreme Court to declare the case moot. The instant case is quite different since here the legality of the actions of the S.E.C. is being directly challenged.

4. The purpose of this affidavit is to demonstrate on a factual basis that even under the erroneous legal standard

proposed by the S.E.C., this case is still not moot. To begin with, the S.E.C. makes an argument closely akin to its mootness argument when it questions my standing. It argues (p. 18 n. 15) that my brief fails to demonstrate that I have retained ownership of 13 shares of Canadian Javelin Ltd. stock. In order to clear up any factual question which may exist, I am annexing as Exhibit C photocopies of stock certificates representing the 13 shares of Canadian Javelin Ltd. which I own. It can be observed that these stock certificates were registered in my name on April 9, 1973. I intend to bring these stock certificates with me to the courtroom when this case is argued orally so that they will be available for examination in the event that the S.E.C. continues to question my ownership of them.

5. In addition to the 13 shares of Canadian Javelin Ltd., I also own securities of more than 200 corporate issuers. On February 4, 1976, Ralph Pernick and Alexander Worobec of the S.E.C. staff examined the stock certificates representing my ownership in these securities. These securities were purchased by me in the over-the-counter market when I was actively in business. Annexed hereto as Exhibit D is an alphabetical list I obtained from the S.E.C. pursuant to a Freedom of Information Act request of all trading suspensions from February 11, 1959 until January 3, 1975. There are 706 securities on this list and a majority of the suspensions took place in 1973 and 1974. Since approximately 10,000 over-the-counter securities are listed in the daily pink sheets published by the National Quotation Bureau, Inc., it can be seen that approximately 7 per cent of all over-the-counter securities had, by January 3, 1975, been suspended from trading at one time or another. Since, as stated previously, I own securities of more than 200 different issuers, it can be expected, based on the above calculations, that 7 per cent of these, or 14, will be the subject of a future trading suspension. An elementary knowledge of probability theory establishes that based upon this, the likelyhood is miniscule that the S.E.C. will never again suspend trading in any security in which I have an interest. Thus, even under the standard proposed by the S.E.C., this case is not moot.

/s/ Samuel H. Sloan
SAMUEL H. SLOAN

Sworn to before me this
11th day of October, 1976

ALAN S. GOLDSTEIN
NOTARY PUBLIC

ALAN S. GOLDSTEIN
Notary Public, State of New York
No. 24-6576200
Qualified in Kings County
Commission Expires March 30, 1978

Canadian Javelin Studied by Police; SEC Halts Trading

APR 30 1975

By a WALL STREET JOURNAL Staff Reporter

ST. JOHN'S, Newfoundland—The Royal Canadian Mounted Police disclosed that it's investigating trading in the shares of Canadian Javelin Ltd. and a 62%-owned subsidiary, Eison Petroleum & Minerals Ltd. It said its commercial fraud squad had carried out a number of raids yesterday in Canada in connection with the investigation.

The U.S. Securities and Exchange Commission earlier yesterday suspended, through May 6, trading in securities of Canadian Javelin "pending the dissemination of information concerning regulatory action by Canadian authorities."

Canadian Javelin is traded on the American Stock Exchange. Eison is traded only on Canadian exchanges.

The Canadian police said "a number of warrants to search" were executed in Vancouver, Toronto, Montreal and St. John's as part of the investigation "and a number of seizures were made." Charges weren't made and there weren't any arrests.

The seizures included documents and correspondence, particularly documents in connection with stock trading, a police officer said.

The police said the investigation, which had started a few months ago, was continuing.

Canadian Javelin officials were unavailable for comment.

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EXHIBIT A

Bill to Revoke Canadian Javelin's Right To Develop Iron-Ore Deposit Is Proposed

JUN 17 1975

By a WALL STREET JOURNAL Staff Reporter

ST. JOHN'S, Newfoundland—Newfoundland plans to introduce legislation to revoke Canadian Javelin Ltd.'s right to develop a large iron-ore deposit in the Labrador sector of the province.

Javelin officials weren't available for comment, but it was understood that the company was preparing a statement.

Trading in Javelin shares was halted on the Montreal Stock Exchange early yesterday afternoon following news of the government's plans. The last trade before the halt was at $3.38, off 25 cents.

"Lack of Effort"

The proposed legislation would provide compensation to Javelin for money spent on developing the Julienne Lake property since it obtained the lease more than 15 years ago. The amount of the compensation wasn't disclosed.

The Julienne Lake deposit isn't associated with Javelin's iron-ore deposit at Wabush also in Labrador, which the company has leased to a group of U.S. and Canadian steel companies.

Other details of the proposed legislation weren't disclosed. But it was learned from Newfoundland government sources that the legislation resulted from a "lack of effort on Javelin's behalf to bring the property to the production stage."

"Javelin has spent considerable sums on the property for a feasibility study and various exploration work," one source said. "However, very little has been done recently, and the government felt that Javelin was making no efforts to see the property to the production stage."

Javelin previously estimated that the Julienne Lake deposit contains one billion tons of iron ore grading 30% to 35% iron.

$3.4 Million Write-Off Possible

Earlier this year, Javelin disclosed that if it should lose the lease, it would be required to write off unamortized preproduction expenses of about $3.4 million. The company also stated then that, based on a 1970 estimate, it would require about $370 million in financing to bring the property into production.

It is understood that Javelin officials were in Newfoundland on Friday, when the government gave notice of its intention to introduce the legislation. The Javelin officials held a "number of meetings with various government ministers," but apparently they weren't able to change the ministers' position, according to one government source.

The bill provides that when the take-over legislation has been passed, the government will call for tenders from companies interested in developing the deposit.

Newfoundland Proposes Boosts In Mining Taxes

Bill to Void Canadian Javelin Right to an Iron Prospect Is Due Later This Week

JUN 18 1975

By a WALL STREET JOURNAL Staff Reporter

ST. JOHN'S, Newfoundland—The provincial government introduced mining-tax legislation in the legislature yesterday that will have the effect of considerably boosting government revenue from mining operations in Newfoundland.

In another development, John McKillop, Newfoundland's deputy minister of mines and energy, said the government will introduce a bill later this week to revoke Canadian Javelin Ltd.'s right to develop a large iron-ore prospect in the Labrador sector of the province.

Both measures are expected to be passed before the summer recess, scheduled to begin at the end of next week.

Retroactivity

The new mining tax act, among other things, would increase the tax on existing mining operations to 18% from 9% and would institute a 30% tax on royalty income. Mining operators in the province who also own the property would pay tax at the rate of 30% on the first 30% of income and at the rate of 18% on the remaining 85%.

Mr. McKillop declined to indicate how much additional revenue the government expects to receive from the taxation, which would mainly affect several large U.S. and Canadian mining and steel companies with operations or interests in big iron-ore reserves in Labrador. The new tax rates are expected to be imposed retroactive to Jan. 1 this year.

The Newfoundland government disclosed Monday that it planned a bill to take over Javelin's Julienne Lake iron-ore deposit because of the "lack of effort on Javelin's behalf to bring the property to the production stage."

Javelin subsequently said in a statement that it has been "effectively prevented from engaging in any activity prerequisite to the commencement of mining operations as a result of the refusal of the government of Newfoundland to grant the company certain surface and other rights to which it is specifically entitled under the terms of the lease."

Surface Rights

Mr. McKillop said in an interview that Javelin asked the government in 1973 for surface rights to the property, "but the government wasn't satisfied as to the areas sought and requested Javelin to present a revised development proposal."

"It's true that they couldn't proceed with development of the deposit without the surface rights being granted. However, their revised proposal . . . failed to satisfy the government as to a feasibility study, financing and marketing of the finished product," the deputy minister said. Javelin earlier said that, based on a 1970 estimate, it would take about $370 million in financing to bring

Canadian Javelin Says Strike At Unit Didn't Hurt Royalties

MONTREAL — Canadian Javelin Ltd. said its royalty income wasn't affected by a 9-week strike at Wabush Mines Ltd. Wabush mines iron ore in Labrador and ships it to a pelletizing plant at Pointe Noire, a Quebec province port on the St. Lawrence River. The Wabush strike started July 7 and ended last Friday.

Canadian Javelin receives its royalties on shipments of pelletized iron ore made at Pointe

More coal, as there was a sufficient stockpile there during the strike, instrument of policy in the steel companies that own Wabush wasn't affected. Last year Canadian Javelin received $3 million in royalties from Wabush.

Wabush is owned by a consortium of Canadian, U.S. and European steel companies, including Steel Co. of Canada, Dominion Foundries & Steel Ltd., Youngstown Sheet & Tube Co., Inland Steel Co., Interlake Inc., Pickands Mather & Co., Wheeling-Pittsburgh Steel Corp. and Finsider of Rome, Italy.

Canadian Javelin Ltd. declared a 2% stock dividend, payable Oct. 10 to stock of record Sept. 14. The ruling [illegible]

SEP 26 1972

Canadian Javelin Ltd. Names Koenig Chairman

SEP 2 6 1972

By a Wall Street Journal Staff Reporter

MONTREAL—Robert P. Koenig, 46-year-old former chairman of Cerro Corp., New York, was appointed board chairman and a member of the executive committee of Canadian Javelin Ltd., a Canadian natural resources development concern. He succeeds James D. McHenry, 66, who retired earlier this year.

Mr. Koenig, a resident of Oyster Bay, N.Y., was engaged by Canadian Javelin last month as a mining consultant to advise the company on its development of the copper prospects in Peru.

Canadian Javelin Ltd. Revises Plan to Acquire All of Bison Petroleum

OCT 1 6 1972

By a Wall Street Journal Staff Reporter

MONTREAL—Canadian Javelin Ltd. said it revised its plan for the complete takeover of Bison Petroleum & Minerals Ltd., in which it already owns a 57.5% interest, because of recent changes in Canadian tax laws.

Subject to approval of Javelin and Bison shareholders and to rulings by regulatory authorities, Canadian Javelin proposes to offer four of its treasury shares for each five shares of Bison not already held by Javelin.

Under the previous plan, announced in June 1971, Javelin intended to purchase the assets rather than the shares of Bison in return for which it would distribute Javelin treasury shares to minority Bison shareholders on the same basis as proposed in the latest plan.

Both Javelin and Bison are Canadian mineral resources development companies with interests primarily in metallic minerals and oil and gas.

Canadian Javelin Gets $4 Million Installment For Newfoundland Mill

DEC 1 1972

By a Wall Street Journal Staff Reporter

MONTREAL—Canadian Javelin Ltd. said it received an additional $4 million payment from the Newfoundland government in connection with the province's takeover of the company's [illegible] mill.

Javelin said the total payment received currently amounts to $5.5 million in cash and short-term notes, including the return of $1.5 million, which is a portion of a collateral security trust fund.

Last June Javelin said the agreement with Newfoundland called for a total payment of more than $10 million. The company said the latest payment is made without prejudice to Canadian Javelin's rights. Talks are continuing with [illegible]

It [illegible] said that to date $9.5 million in [illegible] economic materials have been assigned [illegible] to Javelin.

Newfoundland Moves to Seize Documents On Controversial Mill of Canadian Javelin

DEC 2 1 1972

By a Wall Street Journal Staff Reporter

MONTREAL—Newfoundland has started a wide-ranging investigation into the disposition of funds for a controversial linerboard mill project, constructed by Canadian Javelin Ltd. and taken over by the province earlier this year.

The Royal Canadian Mounted Police, acting under warrants requested by the province, seized more than 100 cases of documents from the Montreal headquarters of Javelin and from the offices and homes of five Javelin officials, who weren't named. Another raid was carried out on a Montreal law office because the lawyer had represented one party involved in the linerboard project, a police spokesman said.

Other documents were seized from homes and offices in St. John's, the capital of Newfoundland, including those of Joseph Smallwood, former premier, and Oliver Tardy, former deputy minister of economic development, according to the Associated Press.

Shortly after the seizures were reported by the Dow Jones News Service, the American Stock Exchange halted trading in Canadian Javelin stock pending a statement. The last trade was at $5 7/8 US. The Montreal Stock Exchange halted trading in Javelin and also Bison Petroleum & Minerals Ltd., a 57%-owned subsidiary. Trading didn't resume on either exchange.

After the market closed, William Wasser, president of Javelin, called the investigation "unfair and could cripple Javelin's bond financing efforts." The company complained that when the files here were examined, it still hadn't found that there hasn't been any real basis for the various leaks, and there has been a complete misunderstanding. Mr. Wasser said.

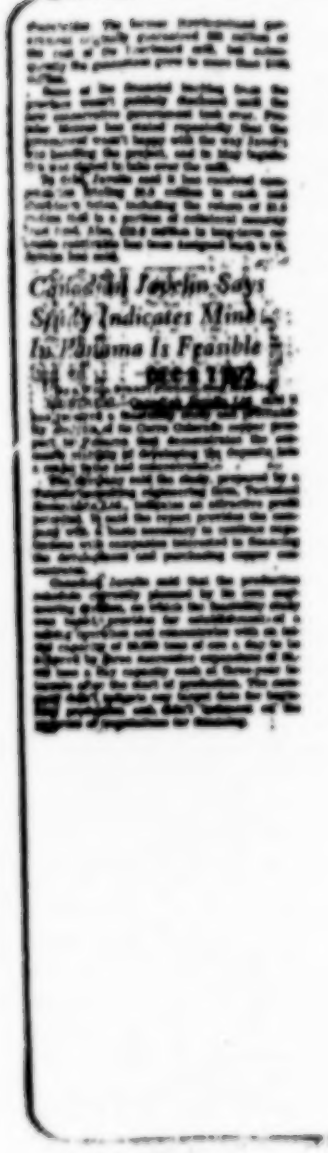
Mr. Smallwood, who is living in Florida and keeps a home near St. John's, was quoted by the Associated Press as saying he couldn't understand why the investigation was started but that it should be a winner.

The seized documents, dating back almost a decade, relate to the long and complex negotiations between Javelin and the former Smallwood government on construction of a $300 million linerboard mill and associated facilities in Stephenville, Newfoundland.

"We want to find out what type of negotiations were going on between the Smallwood government and the company, and if any criminal offenses were committed," the police spokesman said.

After more than 20 years in power, Mr. Smallwood was ousted from office late last year, and the Javelin mill was one of the main issues in the campaign. Progressive Conservative party leader Frank Moores, currently premier, charged that the government had given Javelin too many concessions.

Mr. Smallwood has been a long-time friend of John C. Doyle, chairman of the executive committee of Javelin and the company's major



Colonel Taylor Says Split Indicates Mind Is In Paroma Is Feasible

CANADIAN JAVELIN LIMITED
1115 Sherbrooke St. W.,
Suite 2900, Montreal,
Quebec. H3A 1H5

NOTICE OF A SPECIAL GENERAL MEETING OF SHAREHOLDERS to be held July 30th, 1976

NOTICE is hereby given that a Special General Meeting of Shareholders of CANADIAN JAVELIN LIMITED will be held on Friday, the 30th day of July 1976, at 11 o'clock in the forenoon (Montreal time) at the Windsor Hotel, Montreal, Canada, for the following purposes:

(1) The removal of any or all directors and the election of any or all directors.

A shareholder of record on the books of the Transfer agent and Registrar of the company as of July 2nd, 1976, is entitled to one vote for each share held.

DATED July 14th, 1976.

By order of a judgment rendered on the 18th day of June 1976 by the Superior Court of the Province of Quebec, Canada, presided by the Honourable Madam Justice Rejane L. Colas and of a judgment rendered by the Superior Court of the Province of Quebec on the 9th day of July 1976, presided by the Honourable Justice Rodolphe Paré in the record bearing number 05 009 842 764

Me Michel Robert
Chairman of the meeting duly appointed by the Court.

CANADIAN JAVELIN LIMITED

SPECIAL GENERAL MEETING OF SHAREHOLDERS TO BE HELD JULY 30th, 1976, PROXY STATEMENT AND INFORMATION CIRCULAR

INTRODUCTION

The present proxy statement and information circular is issued by the Me Michel Robert, chairman of the meeting duly appointed by the Court, under the authority of the judgments of the Superior Court in conformity, as far as practicable, in the opinion of Me Michel Robert, with the rules and regulations of the Canada Corporations Act and with the S.E.C. regulations.

THE JUDGMENTS OF THE SUPERIOR COURT OF THE PROVINCE OF QUEBEC, CANADA

The conclusions of a judgment rendered on the 18th of June 1976, by the Superior Court of the Province of Quebec, presided by the Honourable Madam Justice Rejane L. Colas, as modified by a judgment rendered on the 9th day of July 1976, by the Superior Court of the Province of Quebec, presided by the Honourable Justice Rodolphe Paré in the record bearing 05-009842-764, read as follows:

"FOR THESE REASONS, THE COURT:

i) DOTH ORDER that a special general meeting of the shareholders of Misen-cause, Canadian Javelin Limited be held in Montreal, Canada, at the Windsor Hotel, on Thursday, July 29th, 1976, or if more convenient to the chairman of the meeting, on Friday, July 30th, 1976, at the cost of the company, and order Me Michel Robert to cause notice of such meeting of the shareholders to be sent to all shareholders of record as of July 2nd, 1976, at least five clear days prior to the date fixed for such meeting;

ii) DOTH ORDER that all shareholders of record on the books of the Transfer Agent and Registrar of the Company as of July 2nd, 1976, be conclusive evidence of eligibility to vote at said meeting;

iii) DOTH ORDER that all brokerage companies and partnerships or individuals, all banks and trust companies other than Canadian chartered banks banks under the Canadian Banking Act, 1970, R.S.C. B 1, and the Canadian Trust Companies, and/or their nominees and subsidiaries, holding shares of the Company as nominees for beneficial owners, forward all material concerning the meeting, inclusive but not exclusive of notice of meeting, proxy forms and material, to the beneficial owners, and that such brokerage companies, partnerships and individuals be allowed to vote only if a signed direction of the beneficial owners accompanies the proxies submitted in their names;

iv) DOTH ORDER that, where a brokerage company holding shares in its name as nominee, is no longer active as a stock exchange member, or as a licensed active broker or broker-dealer, such shares may be voted by proxy through description of the shares by number and quantity as attestation as to beneficial ownership before a Commissioner of Oaths or any other person authorized to receive affidavits in the jurisdiction where it is given, such document to be conclusive evidence of their right to vote by proxy or in person.

v) DOTH ORDER that Canadian chartered banks under the Canadian Banking Act, 1970 R.S.C., B 1 and Canadian trust companies, and/or their nominees and subsidiaries, acting in a fiduciary capacity, sign an appropriate form as to their authority to direct the proxy in favour of whom they wish to vote for and the signing by such banks or trust companies of this form, will be conclusive evidence of the right to vote;

vi) DOTH ORDER that the notice of the meeting be accompanied by proxy forms and other required documents conforming, as far as practicable, in the opinion of Me Michel Robert, with the rules and regulations of the Canada Corporations Act and with the S.E.C. regulations;

vii) DOTH ORDER that no proxy solicitation be made by any group or persons representing themselves as management of the Company and that any

solicitation of proxies be made, as far as practicable, in the opinion of Me Michel Robert, under the rules and regulations of the Canada Corporations Act and with the S.E.C. regulations and that any solicitor of such proxies present itself as a dissident;

viii) DOTH ORDER that the said Michel Robert in sending a proxy form with the notice of meeting needs not to present himself as a dissident but only in a fiduciary capacity for the company;

ix) DOTH ORDER and appoint the said Michel Robert, to preside over the special general meeting of shareholders and doth order that his decisions be final and binding over all parties concerned;

x) DOTH ORDER that the said Michel Robert sets a closing date for submitting proxies for voting purposes prior to the meeting and that such date be final and binding for all shareholders;

xi) DOTH ORDER and authorize Michel Robert, to appoint two independent scrutineers for the purposes of counting and preparing proxies for voting and the further counting of votes of shareholders appearing in person at the meeting;

xii) DOTH ORDER that the directors elected at the special general meeting of shareholders hold office until the next annual general meeting of shareholders of the company and their qualification and duties be governed by the by-laws of the company;

xiii) DOTH ORDER that no additional new shares or convertible debentures or share options of the company be issued or allotted or transacted by the company until after the next annual general meeting of shareholders;

xiv) DOTH ORDER that all costs, charges and fees of the special general meeting of shareholders be at the expense of the company;

xv) DOTH RESERVE to petitioners a right to seek such other conclusions as may in the circumstances be necessary;

xvi) DOTH ORDER and grant provisional execution of this judgment notwithstanding any appeal.

THE WHOLE, with costs."

The judgment rendered by the Honourable Madam Justice Rejane L. Colas contained the following considerations: (Extract from the judgment)

"CONSIDERING that the evidence has shown that it is urgent that a general meeting of the shareholders be called and held in order to stop the damage that may be caused to the assets of the Company at the detriment of the shareholders, on account of the contradictory decisions that are taken by the two parallel boards of directors presently purporting to act on behalf of the Company and on account of the uncertainty as to the control of the management of the company;

CONSIDERING that the Company will be in default of holding an annual general meeting after June 30th, 1976, and the Company has not prepared and it not in preparation of any notice and proxy statements and other relevant documents for such an annual meeting and it is obvious that the present management does not intend to call a meeting in the near future;

CONSIDERING that in view of the tactics adopted by certain of the directors of the Company and the evident animosities existing, certain shareholders and directors of the company cannot hope to be fairly treated if the meeting is conducted by any one of the present officers and directors of the Company and thus the Court is of the opinion that in the present case it is obvious that there are no means available to the Petitioners which will provide any assurance that the business of the meeting will be properly conducted except under an order of this Court (cf. in Re: Routley's Holdings Ltd., 22 D.L.R., 2d, 415);

CONSIDERING that it is in the best interest of the Company that a special general meeting of the shareholders be called as soon as possible for the purpose of giving a clear mandate to those persons whom shareholders wish to manage the Company;

CONSIDERING that in order to put an end to the litigations presently pending and any future litigation and to have the decision of the shareholders accepted

by all factions, it is necessary that the meeting be conducted by a disinterested person of high repute;

CONSIDERING that Me Michel Robert, the past Bâtonnier Général of the Province of Quebec, being a disinterested person of high repute has manifested his readiness to act as chairman of such meeting and to cause notices to be sent to the shareholders;

CONSIDERING that the Court, when ordering the calling of the meeting or directing the conduct of the meeting, has to be careful to do as little violence as possible to the corporate articles or regulations and should in fact be careful to see that any meeting ordered to be held should be called and conducted in conformity with such articles or regulations as far as practicable;

CONSIDERING that the attorneys of petitioners have mentioned that if a date is chosen for the holding of the meeting, it should be at the end of the month of July so as to give sufficient time for the preparation of the required documentation and of the meeting;"

And the Honourable Justice then proceeds to the conclusions of his judgment already stated.

COMMENTS AND EXPLANATIONS BY THE CHAIRMAN OF THE MEETING

SUBSEQUENT TO A PETITION PRESENTED BY BOONSTRACHAN COAL COMPANY LIMITED AND JOHN C. DOYLE in vitrue of Section 106 of the Canada Corporations Act (1970 R.S.C., ch. 32), a judgment was rendered on the 18th day of June 1976 by the Superior Court of the Province of Quebec presided by the Honourable Madam Justice Rejane L. Colas in the record bearing number 05-009842-764. A further judgment was rendered by the same Court on the 9th day of July 1976 modifying the first judgment.

These judgments order the holding of a Special General Meeting of Shareholders of Canadian Javelin Limited to be held at the end of July 1976, at the Windsor Hotel in Montreal under the chairmanship of Me Michel Robert, duly appointed by the Court. This Special General Meeting of Shareholders is held only for the purpose of electing

directors to hold office until the next Annual General Meeting of shareholders of the company. The meeting to be held on July 30th, 1976, is not the Annual General Meeting of Shareholders of the company.

Only the shareholders of record as of July 2nd, 1976, as evidenced by the books of the Transfer agent and Registrar of the company, Canada Permanent Trust, are eligible to vote at the meeting.

All brokerage companies, partnership, individuals, banks and trust companies, other than Canadian chartered banks and Canadian trust companies holding shares of the company as nominees for beneficial owners must forward to them all material concerning the meeting, inclusive but not exclusive of notice of meeting, proxy forms and other documents. The said brokerage companies, partnerships, individuals, banks and trust companies will be allowed to vote only if they obtain a signed direction from their beneficial owners. These brokerage companies, partnerships, individuals, banks and trust companies, must submit with their proxies to the chairman of the meeting the signed direction of the beneficial owners on, at the latest, the 29th day of July 1976 at 5.00 p.m. (Montreal time).

In the case where a brokerage company holding shares in its name as nominee for a beneficial owner, is no longer active as a stock exchange member or as a licensed active broker-dealer, the beneficial owner may vote his shares by proxy through a description of the shares by number and quantity attested to by a Commissioner of Oaths or any other person authorized to receive affidavits in the jurisdiction where it is given. This document must attest the beneficial ownership of the beneficial owner and be submitted to the chairman of the meeting with the proxy form at the latest the 29th day of July 1976 at 5.00 p.m. (Montreal time). The beneficial owner is also authorized to vote in person by submitting the same attestation. Canadian chartered banks under the Canadian Banking Act (1970, R.S.C. B 1) and Canadian trust companies and/or their nominees and subsidiaries acting in a fiduciary capacity do not need to submit a signed direction from the beneficial owners to exercise their right to vote. They need only to sign an appropriate form as to their authority to direct the proxy in favour of whom they wish to vote. These banks and trust companies must submit to the chairman of the meet-

ing with their proxies, the appropriate form abovementioned on, at the latest the 29th day of July 1976 at 5.00 p.m. (Montreal time).

No proxy solicitation can be made by any group or persons representing themselves as management of the company, any solicitor of proxies must present itself as a dissident, he must submit to the chairman of the meeting a proxy form and a dissident proxy circular in conformity, as far as practicable in the opinion of the chairman of the meeting with the rules and regulations of the Canada Corporations Act and with the S.E.C. regulations. The chairman of the meeting is soliciting proxies in a fiduciary capacity for the company.

All proxies and required documents must be submitted to Me Michel Robert, the chairman of the meeting at the following address: P.O. Box 67, Desjardins Branch, 1, Complexe Desjardins, Suite 1211, Montreal, Canada H5B 1B2, on, at the latest, the 29th day of July 1976 at 5.00 p.m. (Montreal time).

The chairman of the meeting has appointed two chartered accountants to act as independent scrutineers.

The chairman of the meeting has determined that the proxy form and the dissident proxy circular had to be submitted to him by July 14th, 1976 at 5.00 p.m. No proxy form and no dissident proxy circular was submitted to the chairman of the meeting within that delay. To comply with the judgment, a proxy form similar to the proxy form determined by the by-laws of the Company is being sent to each shareholder. In the opinion of the chairman of the meeting, it is not practicable that the proxy form and the proxy statement and information circular be in conformity with the rules and regulations of the Canada Corporations Act and with the Securities and Exchange Commission regulations.

QUORUM

Article 5 of the by-laws of Canadian Javelin Limited states the following as to the quorum of a Special General Meeting of Shareholders:

> "Three or more persons personally present, each of whom shall be entitled to vote thereat, either personally or as the authorized representative of a corporation holding at least one share carrying voting rights thereat, and representing either in their own right or by proxy or as representatives of such a corporation, not less than ten per cent (10%) in number of the outstanding shares of the capital stock of the Company carrying voting rights at such meeting, shall constitute a quorum for a Special General Meeting of Shareholders."

Majority vote FOR will constitute approval of all matters specified in the Notice of Meeting.

PROXY REVOCATION

Any proxy form may be revoked by a shareholder at any time prior to its use at the meeting by an instrument in writing, duly executed by or on behalf of the shareholder deposited with the Company or with the chairman of the meeting at the latest on the 29th day of July 1976 at 5.00 p.m. (Montreal time).

SHARE CAPITAL OF COMPANY

The Company has two classes of shares authorized; namely 12,000,000 Common Shares without nominal or par value and 6,000,000 Preferred Shares with a par value of 10¢ each. The total number of outstanding common shares entitled to vote at the meeting is 7,169,748.* There are presently no preferred shares outstanding. Each outstanding share of capital stock (whether Common or Preferred) entitles the holder to one vote. The present total number of shares which may be voted at the meeting is 7,169,748. John C. Doyle, a director of the Company, is the beneficial owner of 1,319,583 common shares of the Company (approximately 18.4% of the voting shares presently outstanding).

On June 15, 1973, the Company issued $6.5 million of 7½% Series B Convertible Debentures due 1976. $3.5 million principal amount was purchased by Jose Pedro Damiani and immediately transferred to Vilamar, S.A., and the remaining $3 million principal amount was purchased by Marela, S.A., for transfer thereafter to Kanara, S.A. The issue was underwritten and publicly offered by Bouchard & Co., Ltd. who received a commission in the amount of

$50,000. $6.5 million were placed on deposit with International Oceanic Construction Ltd., purportedly to be used to fund road building in Panama. This was described in Note 10 to the financial statements in the Annual Report for 1974.

On August 27, 1973, the Company issued $1 million of 7½% Series A Convertible Debentures due 1976 to Kent Enterprises, Inc. This issue was underwritten by International Bank and Finance Corporation S.A. and 1% underwriting commission and expenses of $2,500. The $987,500 net proceeds were retained by the Company for general corporate purposes.

No Series A or Series B Convertible Debentures were previously outstanding. Company's report on Form 10-K for the year ended December 31, 1972, described the terms and conditions under which the debentures were issued, as well as company's claimed exemption from the registration requirements under the Securities Act of 1933.

During 1974 and 1975, all of the Series A and all Series B Debentures were converted, resulting in the issuance of 747,940 common shares.

REMUNERATION OF DIRECTORS AND OFFICERS

No directors or officers were credited with or received during the last fiscal year aggregate direct remuneration from the Company and its subsidiaries in excess of $40,000, except as follows:

John C. Doyle, Director, $118,750 (1974 $100,600) which was credited to him by Javelin Export Limited, a wholly-owned subsidiary of the Company pursuant to a contract between Javelin Export Limited and Mr. Doyle. Mr. Doyle was formerly Chairman of the Company's Executive Committee but resigned on May 14, 1975.

John A. Rozzini, Vice-President, Project Development, $44,767 (1974, $34,400) including $600.00 in director's fees of the Company and its subsidiaries.

Aggregate direct or accrued renumeration from the Company and its subsidiaries for services rendered by all officers and directors of the Company as a group consisting of 23 persons for the year ended December 31, 1975, was $412,910 (including director's fees) (1974, $336,366, 44 persons).

The aggregate direct remuneration paid or payable by or

on behalf of the Company during its last completed financial year to the directors as such as was $7,100 (1974, $22,700) and to the officers as such was $287,060 (1974, $313,660), excluding John C. Doyle ($118,750), and subsidiaries paid an aggregate direct remuneration to the director and officers as follows:

Subsidiary	*Amount Paid Directors*		*Amount Paid Officers*	
	1974	1975	1974	1975
Newfoundland and Labrador Corporation Limited	$ 800	$1,200	$12,117	$35,000
Javelin Bulkcarriers Limited..	—	—	$30,000	$12,000
Bison Petroleum & Minerals Limited	$1,600	$1,800	$26,380	$51,560
Javelin Export Limited	—	—	$12,000	$24,000

OPTIONS TO PURCHASE STOCK

The shareholders of the Company have previously approved three stock option plans. These options were effective May 9, 1973 and reflects adjustment for a 3% stock dividend paid on June 19, 1971 and a 3% stock dividend paid October 16, 1972. They are exercisable at any time during the period of three years from the date of grant, provided the exercisor shall have had at least six months of continuous service with the Company as an officer, director or employee. The option price for optionees who at the time of the exercise of their options are United States citizens is $11.00 (U.S.) per share or their fair market value, whichever is greater. $8.25 (U.S. per share was the highest market value of the shares on May 9, 1973 when the options were voted and allocated. The option price in the case of all other optionees is $9.25 (U.S.) per share. Notwithstanding the foregoing, the option price to Mr. John C. Doyle was stipulated to be $12.00 (U.S.) per share.

OPTIONS GRANTED TO MANAGEMENT TO PURCHASE SECURITIES

The following information is set forth as to all options to purchase any securities from the Company or any of its subsidiaries which were granted to or exercised by Messrs. Doyle, Wismer and Rozzini, and all directors and officers of

the Company as a group, since the beginning of the last fiscal year, and as to all options held by such person as of the latest practicable date regardless of when such options were granted.

1964 STOCK OPTION PLAN *

	John C. Doyle	William M. Wismer	All Directors and Officers as a Group
Options granted:			
Number of shares	202,632	10,325	262,350
Average option price	$12.00 U.S.	$9.25 U.S.	$11.17 U.S.
Option exercised:			
Number of shares	—		
Aggregate option price of shares purchased	—	$2,025 U.S.	$49,225 U.S.
Aggregate market value of shares on date options were exercised	—	$2,777.50 U.S.	$58,547.50 U.S.
Unexercised options held at December 31, 1975			
Number of shares	202,632	10,105	262,350
Average option price per share	$12.00 U.S.	$9.25 U.S.	$11.17 U.S.

1970 STOCK OPTION PLAN

	John C. Doyle	William M. Wismer	John A. Rozzini	All Directors and Officers as a Group
Options granted:				
Number of shares	10,609	16,136	5,304	91,462
Average option price	$7.00 U.S.	$7.00 U.S.	$7.00 U.S.	$7.07 U.S.
Options exercised:				
Number of shares	—	—	—	—
Aggregate options price of shares purchased	—	—	—	—
Aggregate market value of shares on date options exercised	—	—	—	—

* This plan has expired and the options granted thereunder expired on May 3, 1976. No further options can be issued under this plan, nor may any outstanding options be exercised.

Unexercised options held at December 31, 1975				
Number of shares	10,609	16,136	5,304	91,462
Average option price per share	$7.00 U.S.	$7.00 U.S.	$7.00 U.S.	$7.07 U.S.

OTHER MATTERS CONCERNING THE COMPANY

The shares of the Company owned by Mr. Doyle are the subject of a Writ of Extent issued out of the Exchequer Court of Canada pending adjudication as to whether or not income taxes are owed by Mr. Doyle. In the event the Government of Canada sustains its claims, presently in litigation before the Exchequer Court of Canada, some or all of such shares in the Government's possession totalling 125,000 shares may be subject to sale by the Government of Canada in satisfaction of its claims against Mr. Doyle.

On or about July 22, 1965, the Department of National Revenue of Canada served a demand on the Company requiring it to pay to the Receiver General of Canada any monies due or to become due to Mr. Doyle pending adjudication as to whether or not taxes are properly due by Mr. Doyle. It is understood that no additional liability of the Company is created unless payments are made to Mr. Doyle, in which case the Company becomes liable to the Receiver General of Canada in an amount equal to such payments. As of December 31, 1975, the Company was contingently liable, as a result of the above, in the amount of $525,055 covering the ten-year period. Amounts accrued to Mr. Doyle by reason of his employment with Javelin Export Limited are not subject to the third party demand.

Mr. Doyle, consultant to the Company, founded the Company and is its principal shareholder and was in effective control of the Company until March 6, 1976. Consequently, he has had a significant role in the management of the Company, the negotiation of its various contracts and the formulation of its policies.

A United States grand jury indictment was made public on August 7, 1963, charging violations of the Securities Act of 1933, against Mr. Doyle, then Chairman of the Board and President of the Company and three others. On February 4, 1965, Mr. Doyle withdrew his previous plea of not guilty to

the indictment, and pleaded guilty to one count of the indictment which charged that he sent fifty shares of the stock of the Company through the mails for sale or delivery after sale without such stock having been registered with the Securities and Exchange Commission pursuant to the Securities Act of 1933. On May 3, 1965, Mr. Doyle was sentenced to pay a fine of $5,000 and to a sentence of three years, all but three months of which was suspended, with probation for one year. All other counts of the indictment were dismissed. The Company was not indicted. Following the unsuccessful appeal of Mr. Doyle's sentence, Mr. Doyle was to have appeared to commence serving the three-month sentence on July 15, 1965. He did not appear on that date and currently is considered to have illegally absented himself from the jurisdiction of the United States under the laws of the United States. Mr. Doyle is a Canadian citizen and the acts alleged are not an offense under Canadian law.

A civil action which had been brought against the Company and Messrs. Doyle and William M. Wismer by the Securities and Exchange Commission was settled by agreement on July 17, 1974. Pursuant to that agreement, the Company and Mr. Doyle, without admitting or denying any of the allegations contained in the Securities and Exchange Commission complaint, voluntarily consented to the entry of judgments of permanent injunction against them. In addition, Mr. Wismer has entered into a stipulation of dismissal of the action against him.

The injunction consented to by the Company prohibits the Company from violating, in general and in certain specified manners, Sections 5 and 17 (a) of the Securities Act of 1933 and Sections 10 (b), 13 (a) and (b), and 15 (d) of the Securities Exchange Act of 1934, together with Rule 10b-5 promulgated by the Security and Exchange Commission under the Securities Exchange Act of 1934.

In addition, the Company voluntarily agreed as part of the settlement confirmed by the court to institute new procedures covering dissemination of information to the public and compliance with requirements of the U.S. securities laws.

Pursuant to this portion of the judgment, the management of the Company is obliged to propose, vote their shares for, and solicit proxies for the election of directors, at least 40%

of whom shall consist of outside independent directors meeting certain specified criteria. In addition, the Company has designated a public information officer through whom all dissemination of information to the public by the Company or any of its subsidiaries shall be made. This public information officer is a member of, and responsible to, a standing committee, a majority of which consists of independent Board members. This committee is fully responsible to the Company's Board of Directors and will pass on all information to be disseminated to the public. In compliance with its undertaking, the Company also named a special independent outside counsel to the standing committee, who shall review the dissemination of all information to the public by the Company, any of its subsidiaries or its officers and directors. The judgment also spells out procedures designed to ensure that the information officer, the standing committee, and the special counsel shall perform their functions in an effective manner. The present members of the committee are Messrs. Frank Kaplan, Company Spokesman, H.W.M. Smith and Frank C. Shirriff. Counsel to the committee is Mr. Meyer Eisenberg of the law firm of Lawler, Kent & Eisenberg, Washington, D.C.

The settlement agreed to by Mr. Doyle and confirmed by court judgment prohibits violations of the U.S. securities law by him in language substantially similar to that of the judgment entered with respect to the Company. In addition, Mr. Doyle has agreed, and it is a part of the judgment, that he will not engage in the dissemination of information to the public with respect to the Company, its subsidiaries, affiliates, or successors in interest, without the specific prior approval and at the direction of the standing committee. Mr. Doyle agreed to cooperate fully with the standing committee and the special counsel and to report periodically any of his transactions in the securities of the Company or any of its subsidiaries without any inference that Mr. Doyle has not reported transactions in the past.

Mr. Wismer, resigned as President of Canadian Javelin Limited to assume the presidency of Bison Petroleum & Minerals Limited, agreed as a condition of settlement to substantially the same terms as those set forth in the injunction agreed to by Mr. Doyle.

On December 3, 1973 a class action was instituted in the

United States District Court, Southern District of New York, entitled Gertrude Bonime v. John C. Doyle, William M. Wismer and Canadian Javelin Limited. The complaint in that action alleged violations of the United States Securities and Exchange Act and common law and sought to recover unspecified money damages, costs and expenses. During 1975 the parties entered into a proposed settlement which provided that, if approved by the Court, defendants would pay $1,350,000 in cash into a Settlement Fund and bear the expenses of the administration in consummating the settlement. The Company agreed with the other defendants to pay the entire amount of settlement. On June 30, 1976 the Court handed down a decision approving the settlement. No order has been signed fixing the time for payment. It is not known whether the Company will be directed to make such payment within fourteen days after the order is signed or after the order has become final through expiration of time to appeal from any order affirming the settlement order.

On February 19, 1976, a civil action was filed in the United States District Court, Southern District in New York, entitled Bilan Realty Corp. and others against Canadian Javelin Limited, Messrs. Doyle and William M. Wismer. In this action 29 Plaintiffs, who had previously elected exclusion from the class of Plaintiff in the case of Gertrude Bonime v. John C. Doyle, William M. Wismer and Canadian Javelin Limited, joined as Plaintiffs claiming damages, for violations of section 10(b) of the United States Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The Company and Mr. Wismer have filed answers, but Mr. Doyle has not as yet been formally served with papers in the case. Mr. Doyle strenuously denies the claims made by the Plaintiff.

In addition there are two class actions against the Company and Messrs. Doyle and Wismer, one in the United States District Court, Northern District of Illinois, and one in the Circuit Court of Cook County, Illinois. These actions allege violations of the United States securities laws and state securities laws and common law. The Defendants are vigorously contesting these actions but believe they should be settled or otherwise disposed of to save the expense of full litigation.

On December 31, 1975, an information was filed before a Justice of the Peace in St-John's, Newfoundland, charging that Messrs. Doyle, Charles H. Ducharme, Robert K. Glass, Albert A. Furst and K. D. Landrigan, in violation of section 338(2) of the Code, caused shares of Javelin and Bison Petroleum and Minerals Limited to be bought and sold on the Montreal and Vancouver Stock Exchanges at predetermined prices and in such volume whereby the public market price was affected. Mr. Doyle strenuously denies the charges. In March 1976 application was made to the Supreme Court of Newfoundland to quash the charges on the ground that a Newfoundland Justice of the Peace was without any jurisdiction in the matter. The Newfoundland Supreme Court denied the application for a Writ, and the matter is now in appeal to the Newfoundland Court of Appeal where it is scheduled for a hearing in October 1976. No other hearings or proceedings are scheduled.

On February 2, 1976, although not released until March 8, 1976 to the public, an Information containing 406 charges of wash trading in the shares of Javelin and Bison Petroleum and Minerals Limited in violation of section 340 of the Code against Messrs. Doyle, Charles H. Ducharme, Robert K. Glass, Albert A. Furst and K. D. Landrigan was filed before a Justice of the Peace in St-John's, Newfoundland. Mr. Doyle strenuously denies all the charges and claims he was not involved in any of the trading. The charges appear to be related to and to arise out of the same transaction involved in the earlier Information filed on December 31, 1975.

On April 26, 1976, the Securities and Exchange Commission commenced a civil action in the United States District Court, Southern District of New York, entitled Securities and Exchange Commission v. Doyle, et al. The defendants in this action are John C. Doyle, Robert K. Glass, Albert A. Furst, Kiely Daniel Landrigan, Hubert Ducharme, Union Trust Corporation, Guardian Management, S.A., Securities & Real Estate Holding Co. (Overseas) Ltd. and Parsons & Landrigan Ltd. Messrs. Doyle and Ducharme are former officers of Canadian Javelin Limited. The Company is not a defendant in the action. The complaint alleges that the defendants violated Section 9(a)(1), 9(a)(2) and 10(b) of the Securities Exchange Act of 1934 and Rule 10b-5 there-

under in that, inter alia, by acting singly and in concert they "effected a series of transactions through purchases and sales of Canadian Javelin stock which created an illusion of widespread and bona fide buying interest in Canadian Javelin Limited, and dominated and controlled the trading in Canadian Javelin stock causing the price of the stock to be artificially maintained at and to reach arbitrarily inflated levels." The action seeks permanent injunctive relief.

On April 29, 1975, the Royal Canadian Mounted Police acting as law enforcement agency for the Province of Newfoundland conducted a limited search of the Company's offices in Montreal, taking a limited number of documents. The Company is informed that searches were also made of a number of Canadian brokerage houses, other firms and individuals. Documents were being sought which might contain evidence of a conspiracy on the part of certain individuals including persons closely connected with the Company to affect the price on the Montreal and Vancouver Stock Exchanges of the common stock of the Company and of its subsidiary, Bison Petroleum & Minerals Limited. There is no allegation that the Company has committed any wrongdoing, and regulatory authorities in Canada have stated publicly that there is no action currently pending against the Company.

On April 29, 1975, the Securities and Exchange Commission suspended trading in the shares of the Company in the United States. That Commission has informed the Company that the purpose of this suspension was to permit dissemination of information to the U.S. public concerning the existence of the afore-mentioned inquiries. Subsequently, that Commission informed the Company that it would continue the suspension pending publication of the Company's financial statements and any other information required to inform the public concerning the Company. That Commission has also informed the Company that, because of the afore-mentioned investigation, it has decided to conduct its own investigation of the matter insofar as it might concern the United States. Trading of the Company's shares and those of Bison Petroleum & Minerals Limited has continued without interruption on the Montreal and Vancouver Stock Exchanges.

On April 26, 1976 the Securities and Exchange Commis-

sion filed in the United States District Court, Southern District of New York, a civil action against Messrs. Doyle, Robert K. Glass, Albert A. Furst, K. D. Landrigan and Charles H. Ducharme and four corporations claiming that the defendants engaged in violations of U.S. securities laws and seeking injunctive relief to prevent further alleged violations. The Securities and Exchange Commission ban on trading in shares of the Company was lifted shortly after the filing but the American Stock Exchange has not lifted its suspension.

In April 1976, the Company commenced an action in the Superior Court of Quebec against John C. Doyle, William Roxburgh and Hubert Ducharme, all former officers of the Company. Mr. Doyle is a former Chairman of the Company's Executive Committee and remains a director of the Company. The action alleges that in 1967, the Defendants fraudulently misrepresented to the Company the nature of a transaction involving the Banque Romande, a Swiss company, and that by means of such representations Defendants caused the Company to expend $1,452.500 without receiving value in return.

Me Michel Robert
Chairman of the meeting duly appointed by the Court.

NUMBER 1 2 3 4 5 6 7 8 9 0
UNITED UNITS 1 2 3 4 5 6 7 8 9

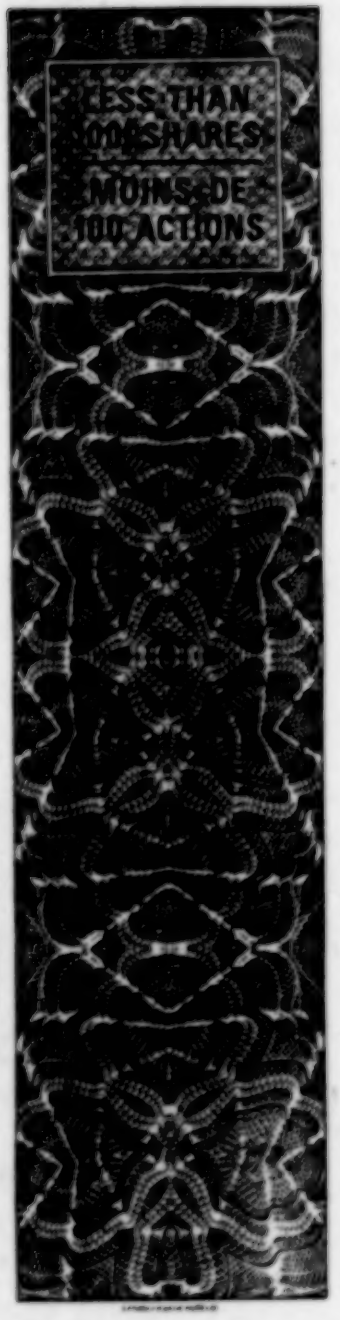
-10-

(INCORPORATED UNDER THE COMPANIES ACT, CANADA)
(CONSTITUÉE EN VERTU DE LA LOI DES COMPAGNIES, CANADA)

AUTHORIZED CAPITAL STOCK
12,000,000 SHARES WITHOUT NOMINAL OR PAR VALUE

CAPITAL-ACTIONS AUTORISE
12,000,000 ACTIONS SANS VALEUR NOMINALE OU AU PAIR

Canadian Javelin Limited



CUSIP 136231 10 7

THIS CERTIFIES THAT
CECI ATTESTE QUE

-SAMUEL H. SLOAN-

is the registered holder of
est le détenteur enregistré de

TEN

CANADIAN JAVELIN LIMITED

fully paid and non-assessable Shares of the Capital Stock of the Company transferable only on the books of the Company by the holder hereof in person or by duly authorized attorney upon surrender of this Certificate properly endorsed or assigned and subject to the by-laws of the Company as amended from time to time.

entièrement libérées et non susceptibles d'appel de versements du capital-actions de la Compagnie transférables seulement sur les livres de la Compagnie par le détenteur en personne ou par son fondé de pouvoir dûment autorisé sur remise du présent certificat dûment endossé ou cédé et sous réserve des règlements administratifs de la Compagnie tels que modifiés de temps à autre.

SHARES

ACTIONS

APR 9 - 1973

CANADIAN JAVELIN LIMITED
INCORPORATED
1951

President - Le Président

Secretary - Le Secrétaire

COUNTERSIGNED AND REGISTERED:
CONTRESIGNÉE ET ENREGISTRÉE:
CONTINENTAL STOCK TRANSFER COMPANY, Jersey City, U.S.A.
TRANSFER AGENT AND REGISTRAR
AGENT DE TRANSFERT ET REGISTRAIRE

AUTHORIZED OFFICER - OFFICIER AUTORISÉ

EXHIBIT C

J074513

HUNDREDS	1 2 3 4 5 6 7 8 9
TENS	
UNITS	1 2
UNITS	1 2 . 4 5 6 7 8 9 0

-3-

(INCORPORATED UNDER THE COMPANIES ACT, CANADA)
(CONSTITUÉE EN VERTU DE LA LOI DES COMPAGNIES, CANADA)

AUTHORIZED CAPITAL STOCK
12,000,000 SHARES WITHOUT NOMINAL OR PAR VALUE

CAPITAL-ACTIONS AUTORISE
12,000,000 ACTIONS SANS VALEUR NOMINALE OU AU PAIR

Canadian Javelin Limited

CUSIP 136231 10 7

THIS CERTIFIES THAT
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-SAMUEL H. SLOAN-

is the registered holder of
est le propriétaire enregistré de

THREE

FULLY PAID AND NON-ASSESSABLE SHARES WITHOUT NOMINAL OR PAR VALUE OF THE CAPITAL STOCK OF
ACTIONS ENTIÈREMENT LIBÉRÉES SANS VALEUR NOMINALE OU AU PAIR DU CAPITAL-ACTIONS DE

CANADIAN JAVELIN LIMITED

transferable on the books of the Company by the holder hereof in person or by attorney upon surrender of this Certificate properly endorsed and upon compliance with such regulations as may be prescribed by the Company.

SHARES

transmissible sur les livres de la Compagnie par le détenteur en personne ou par procureur sur présentation et remise de ce Certificat dûment endossé et sur observation des règlements que la Compagnie peut prescrire.

ACTIONS

In Witness Whereof the Company has caused this Certificate to be signed and sealed by its duly authorized officers.

En foi de quoi la Compagnie a fait signer et sceller ce Certificat par ses dirigeants dûment autorisés.

APR 9 - 1973

CANADIAN JAVELIN LIMITED INCORPORATED 1951

President -Le Président

Secretary -Le Secrétaire

AUTHORIZED OFFICER - OFFICIER AUTORISÉ

COUNTERSIGNED AND REGISTERED:
CONTRESIGNÉ ET ENREGISTRÉ:
CONTINENTAL STOCK TRANSFER COMPANY, Jersey City, U.S.A.
TRANSFER AGENT AND REGISTRAR
AGENT DE TRANSFERT ET REGISTRAIRE

BY
PAR

LESS THAN 100 SHARES
MOINS DE 100 ACTIONS

THE SHARES REPRESENTED BY THIS CERTIFICATE ARE INTERCHANGEABLE AT THE OFFICES OF CANADA PERMANENT TRUST COMPANY, TRANSFER AGENT AND REGISTRAR IN THE CITIES OF ST. JOHN'S, HALIFAX, MONTREAL, TORONTO AND VANCOUVER, CANADA, AND AT THE OFFICE OF CONTINENTAL STOCK TRANSFER COMPANY, TRANSFER AGENT AND REGISTRAR IN JERSEY CITY, U.S.A.

LES ACTIONS REPRÉSENTÉES PAR CE CERTIFICAT SONT TRANSFÉRABLES AUX BUREAUX DE CANADA PERMANENT TRUST COMPANY, AGENT DE TRANSFERT ET REGISTRAIRE EN LES VILLES DE ST. JOHN'S, HALIFAX, MONTRÉAL, TORONTO ET VANCOUVER, CANADA, ET AU BUREAU DE CONTINENTAL STOCK TRANSFER COMPANY, AGENT DE TRANSFERT ET REGISTRAIRE EN JERSEY CITY, U.S.A.

Attached is an alphabetical list of all trading suspensions initiated by the Commission from February 11, 1959 through January 3, 1975. Periodically pages listing subsequent trading suspensions will be sent to supplement the attached list.

Trading Suspensions

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
A-V Electronics, Inc.	9/13/72	9774	9/22/72	(1)
AART Communications Corp., Inc.	10/30/70	9014	11/8/70	(1)
ABC Freight Forwarding Corp	12/4/73	10536	12/13/73	(1)
AFCOA	2/20/73	10012	3/1/73	(1)
AFM Holding Inc.	11/27/73	10522	12/6/73	(1)
AIM Companies	12/4/73	10536	12/13/73	(1)
AVM Corp.	1/10/73	9936	1/28/73	9970
Aadan Corp.	3/19/73	10049	8/5/73	10322
Aberle Industries Inc.	9/19/73	10400	9/28/73	(1)
Academic Development	8/21/72	9742	8/30/72	(1)
Accurate Calculator	6/29/72	9661	8/6/73	10320
Acme Missiles & Construction Corp.	8/3/71	9276	8/12/71	(1)
	11/27/73	10522	12/6/73	(1)
Administrative Systems, Inc.	4/26/73	10128	5/5/73	(1)
Advance Metal Products Inc.	12/11/73	10546	12/20/73	(1)
Aero Resources, Inc.	11/13/74	11099	11/22/74	(1)
Agard Electronics Corp.	12/4/73	10536	12/13/73	(1)
AIM Companies	12/4/73	10536	12/13/73	(1)
Air California	5/11/73	10145	6/19/73	10228
Airtronics International Corp. of Florida	9/28/73	10412	10/7/73	(1)
Alaska International Corporation	12/17/69	8780	12/26/69	(1)
Albee Homes Inc.	2/12/74	10639	2/21/74	(1)
Albros Industries Corp.	4/13/73	10109	4/22/73	(1)
Alcar Instruments, Inc.	3/28/68	8287	10/23/68	8427

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
All State Credit Corp.	4/11/74	10732	4/20/74	(1)
All State Investment Corp SEE: Allstate Investment Corp.				
Allied Equities Corporation	5/7/74	10780	5/16/74	(1)
Allied Management & Systems Corp.	9/28/73	10412	10/7/73	(1)
Allstate Credit Corp. SEE: All State Credit Corp				
Allstate Investment Corp.	11/22/72	9879	12/1/72	(1)
Alrac	1/3/74	10581	1/12/74	(1)
Alsco, Inc.	4/05/68	8291	4/8/68	(1)
	7/31/68	8371	8/14/68	8377
Alscope Consolidated, Ltd.	2/19/68	8259	9/2/68	8390
Amcourt Systems, Inc.	10/31/74	11081	11/9/74	(1)
America's Beautiful Cities	8/1/73	10315	8/10/73	(1)
American All-Servus Corp	7/30/74	10936	8/8/74	10955
American Checkmaster Systems	4/22/68	8302	8/4/68	8368
American Data Services, Inc.	3/21/74	10698	3/30/74	(1)
American Environmental Control Corp.	2/19/71	9085	2/28/71	(1)
American Export Industries, Inc.	5/8/74	10784	5/17/74	(1)
American Export Lines, Inc.	5/8/74	10784	5/17/74	(1)
American Home Industries Corp.	7/19/73	10288	7/28/73	(1)
American Land Co.	5/7/73	10138	5/16/73	(1)
American Plan Corp	5/16/67	8091	6/6/67	8097
American Raceways, Inc.	6/2/71	9197	6/11/71	(1)
American Steel & Pump Corp.	4/21/67	8058	6/2/67	8091
American Telephone & Telegraph Co.	11/20/74	11111	11/21/74	(1)
American Variety International, Inc.	7/3/74	10900	7/12/74	(1)
Anita Lynn Cosmetics, Inc.	5/14/74	10799	5/23/74	(1)
Apex Minerals Corp.	5/11/61	6556	9/2/62	6894
Apollo Industries, Inc.	6/22/73	10236	7/1/73	(1)
	5/10/74	10793	5/19/74	(1)
Applied Devices Corp.	2/3/72	9483	6/1/72	9619
	5/15/73	10149	5/14/73	(1)
	2/26/74	10657	3/7/74	(1)
Applied Fluidics Inc.	9/19/73	10400	9/28/73	(1)
Applied Synthetics Corp.	5/7/73	10138	5/16/73	(1)
Arboreal Associates Inc.	2/11/74	10638	2/20/74	(1)
Arkansas Valley Industries, Inc.	11/10/69	8747	11/19/69	(1)
Arlan's Department Stores, Inc.	5/11/73	1-146	6/9/73	10212
Arthritis Clinics International Inc.	8/6/74	10949	8/15/74	(1)
Artec Corp.	12/4/73	10536	12/13/73	(1)
Associated Oil & Gas Co.	1/19/66	7798	2/9/66	7819
Associates International, Inc.	1/30/74	10623	2/8/74	(1)
Atek Industries Inc.	12/11/73	10546	12/20/73	(1)
Atlantic Industries, Inc.	10/2/74	11033	10/11/74	(1)
Atlantic Research Corp.	10/10/62	6911	11/15/62	6937
Atreo Manufacturing Co., Inc.	7/12/73	10281	7/21/73	(1)
Autobale America Corp.	10/24/73	10453	11/12/73	10491
Automated Procedures Corp.	3/16/62	(7)	9/11/62	6895
Automation Sciences Inc.	5/7/73	10138	5/16/73	(1)
Aviation Holding Corp.	6/28/73	10248	7/7/73	(1)
Avien, Inc.	11/13/74	11099	11/22/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Release Number
Avis, Inc.	10/1/74	11034	10/16/74	11054
Avtek Corp.	8/2/73	10319	8/11/73	(1)
Aztec Products	7/3/73	10267	11/9/73	10488
American Agronomics Corp	1/3/75	11164		

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
BBI Inc.	5/24/73	10173		
B.G.I. Corp.	2/12/74	10639	2/21/74	(1)
BISI Inc	7/6/73	10271	7/15/73	(1)
B.S.F. Company	7/19/68	8358	9/1/69	8675
Barr Financial, Ltd	7/13/71	9251	7/22/71	(1)
Bartep Industries, Inc.	2/19/69	8533	7/18/69	8649
Beck Industries, Inc.	4/11/74	10732	4/20/74	(1)
Belair Financial Corp.	4/26/73	10128	5/5/73	(1)
Belock Instrument Corporation	6/22/65	7632	11/8/65	7741
Beneficial Labs, Inc.	3/5/73	10031	10/30/73	10460
Berlin Doman Helicopters, Inc.	1/25/68	8243	1/29/68	(1)
Betta Orthodontics Supplies, Inc	11/21/74	11115	11/30/74	(1)
Bevis Industries	5/15/72	?	5/31/72	9625
Bio-Medical Sciences, Inc.	10/11/74	11047		
Black Bear Industries, Inc.	4/19/62		12/19/62	
Bolton Group, Ltd	3/28/73	10065	4/6/73	(1)
Botar Corp.	1/8/74	10588	1/27/74	10614
Brian Lloyd Inc.	4/11/74	10732	4/20/74	(1)
Brilund Mines, Ltd	1/25/68	8241	1/29/68	(1)
Brinco, Ltd	3/11/74	10677—10695	4/7/74	10718
Bristol Dynamics, Inc.	12/23/65	7777	1/24/66	7801
Brogan Associates, Inc.	11/20/73	10515	11/29/73	(1)
Brokerage Data Processing Corp	4/19/71	9153	4/28/71	(1)
Brown's Limousine Service Inc	5/15/73	10149	5/24/73	(1)
Bruce, (E.L.) Co., Inc.	6/13/62	?	11/18/62	6934
Building Systems, Inc.	2/26/74	10667	3/7/74	(1)
Burmah Oil Co. Ltd.	1/3/75	11165		

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
CSC Corp.	6/22/73	10236	7/1/73	(1)
CIC Industries Inc.	8/14/73	10340	9/26/73	10408
CM Industries	2/28/74	10662	3/9/74	(1)
Caledonia Silver-lead Mining Co.	5/7/74	10779	5/16/74	10779 (1)
Cambridge Nuclear Corp.	4/11/74	10732	4/20/74	(1)
Cameo-Parkway Records, Inc.	2/23/68	8263	9/14/68	8400
Camera Corp. of America	8/3/71	9276	8/12/71	(1)
Camin Industries Corp	11/1/72	9845	11/9/72	9852
Canadian Javelin, Ltd.	3/17/71	9111	4/5/71	9125
	3/7/72	9528	8/8/72	9715
Cancer Detection Inc.	5/17/73	10153	5/26/73	(1)
Canusa Holding Ltd.	8/21/72	9742	8/30/72	(1)
Capezio & Things, Inc.	2/27/74	10660	3/8/74	(1)
Capitol Holding Corp	1/15/69	8497	10/31/69	8730
Carbon, Inc.	1/12/70	8799	1/21/70	(1)
Carolina Caribbean Corp	11/13/74	11099	11/22/74	(1)
Cassette Cartridge Corp	4/11/74	10732	4/20/74	(1)
Charnita Inc.	3/21/73	10051	3/30/73	(1)
Charter Oil Co., Ltd.	2/1/73	9980	2/10/73	(1)
Chemalloy Minerals, Ltd.	6/22/67	8108	7/2/67	8112
Chill-Can Industries, Inc	2/12/70	8818	2/21/70	(1)
Chris McGuire Inc.	7/2/73	10264	7/11/73	(1)
Clinton Oil Co.	6/1/72	9627	5/26/73	10177
	(interim release--34-9880 dated 11/24/72)			
Coastal States Gas Corp.	6/5/73	10202	9/26/73	10408
Coastal States Gas Producing Corp	8/8/73	10334	9/26/73	10408
Coatings Unlimited, Inc.	12/7/71	9415	3/25/72	9543
Co-Build Companies Inc.	9/18/73	10396	9/27/73	(1)
Coditron Corp	8/14/67	8144	4/16/68	8295
	8/2/73	10319	8/11/73	(1)
Cogar Corporation	4/17/72	9577	8/14/72	9728
Collins Radio	8/16/73	10344	8/22/73	10360
Colorado Interstate Corp	8/8/73	10334 10336	9/26/73	10408
Colorado Interstate Gas Co.	8/8/73	10334	9/26/73	10408
Commercial Finance Corporation of New Jersey	3/12/69	8553	12/6/69	8761
Commonwealth National Realty Trust	6/25/74	10876 10904	7/14/74	10916
Commonwealth United Corp	8/1/69	8663	12/20/69	8778
Communications Cybernetics Corp	7/19/72	9687	7/28/72	(1)
Comprehensive Health Systems Inc.	6/26/73	10240	7/5/73	(1)
Compudat Scientific Systems Inc	11/1/72	9845	11/10/72	9853
Compuguide Corp	4/11/74	10732	4/20/74	(1)
Compusamp Inc.	9/4/73	10373	9/13/73	(1)
Computer Microdata Corp	8/3/72	9739	8/28/72	9749
Computer Statistics, Inc	7/8/71	9245	7/17/71	(1)
Computronics Industries Corp	7/6/70	8921	7/15/70	(1)
Comstock-Keystone Mining Co.	7/22/68	8359	10/6/68	8438
a/k/a Memory Magnetics International	12/17/68	8472	5/4/69	8587 8655
Concepts & Holding, Inc.	12/4/69	8768	12/13/69	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Consolidated Medical Industries Inc.	6/4/73	10198	6/13/73	(1)
	9/27/73	10410	10/6/73	(1)
Consolidated Oil & Gas Inc	5/18/70	8895	6/9/70	8899
Consolidated Smelting & Refining Corp.	12/22/69	8783	12/31/69	(1)
Continental Dynamics, Inc.	12/9/69	8774	12/18/69	(1)
Now known as: Continental Dynamics, Ltd.	8/3/71	9275	8/12/71	9297
Continental Dynamics, Ltd	5/22/74	10821	5/31/74	(1)
Continental Investment Corp	5/7/69	8603	6/11/69	?
Continental Resources, International	8/14/74	10971	8/23/74	(1)
Continental Vending Machine Corp	3/8/63	7034		
	interim releases: 8465 12/5/68; 8469 12/12/68			
Control Metals Corporation	12/4/69	8766	12/13/69	(1)
Cook Industries, Inc.	5/8/74	10783	5/9/74	10789
Cook Treadwell & Harry Inc	5/8/74	10783	5/17/74	10789
	5/18/74	10814	5/27/74	(1)
Cormac Chemical Corp	2/7/68	8252	6/29/68	8342
Cosmos Industries, Inc	4/26/73	10128	5/5/73	(1)
Credit Systems Inc.	7/12/73	10281	7/21/73	(1)
Crescent Corp	1/6/67	8016	1/8/67	(1)
Crescent General Corp	7/14/72	9677	9/26/72	9792
Crestline Uranium & Mining Co.	1/27/69	8504	4/23/69	8579
Cross Country Industries Inc.	2/28/74	10662	3/9/74	(1)
Crown Drug Co.	4/2/71	9133	4/11/71	(1)
	6/22/73	10235	7/1/73	(1)
Crystalography Corp	10/11/72	9815	5/18/73	10156
Custer Channel Wing Corp	4/26/73	10128	5/5/73	(1)
	2/28/74	10662	3/9/74	(1)
Canadian Javelin, Ltd.	3/17/71	9111	4/5/71	9125
	3/7/72	9528	8/8/72	9715
	11/29/73	10534	1/12/75	11172
	1/13/73	11178	1/22/75	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
D.C. Transit System Inc.	11/13/74	11099	11/22/74	(1)
DCS Financial Corp	11/29/72	9886	3/28/73	10071
DEI Industries Inc.	5/21/73	10164	5/30/73	(1)
Dal Petroleum Co.	6/29/71	9238	7/9/71	(1)
Dalto Electronics Corp	8/10/72	9726	8/19/72	(1)
	5/7/73	10138	5/16/73	(1)
Dashew Business Machines, Inc	4/13/72	9573	4/26/72	(1)
	8/30/72	9754	9/8/72	(1)
Data Industries Corp of Texas	4/11/74	10732	4/20/74	(1)
Data Pacific Corp	7/12/73	10281	7/21/73	(1)
Datamedia International, Inc.	2/28/72	9512	3/8/72	(1)
	7/5/73	10269	7/14/73	(1)
Datatronics, Inc.	4/11/74	10732	4/20/74	(1)
Decair Corp	2/28/74	10662	3/9.74	(1)
Dekcraft Corp	7/25/73	10298	8/3/73	(1)
Delicias International Inc.	5/17/73	10155	5/16/73	(1)
Design-A-Phone Inc.	2/1/73	9980	2/10/73	(1)
Develco, Inc.	6/12/73	10216	6/21/73	(1)
Dextra Corp	1/21/72	9474	2/6/72	(1)
	4/11/74	10732	4/20/74	(1)
Di-an Controls Inc	7/26/73	10302	8/4/73	(1)
Dialscan Systems, Inc.	4/11/74	10732	4/20/74	(1)
Diapulse Corp of America	8/3/73	10321	8/12/73	(1)
Display Sciences Inc.	7/6/73	10271	7/15/73	(1)
Diversa Inc.	4/11/74	10732	4/20/74	(1)
Diversified Earth Sciences	9/12/73	10389	10/1/73	10414
Doman, Berlin Helicopters, Inc.	SEE UNDER:	Berlin		
Drew National Leasing Corp	1/24/74	10615	2/2/74	(1)
Drexel Industries, Inc.	3/17/70	8842	3/26/70	(1)
Duesenberg Corp	7/26/72	9698	9/3/72	9756
	11/27/73	10522	12/6/73	(1)
Dumont Corporation	11/1/68	8442	4/19/69	8571
	4/11/74	10732	4/20/74	(1)
Durst, S.F. & Co., Inc.	4/11/74	10732	4/20/74	(1)
Dyna Ray Corporation	8/17/67	8147	10/14/67	8178
Data Lease Financial Corp	12/19/74	11145	12/28/74	(1)
DisposableResearch Industries	12/19/74	11145	12/28/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
EPM Financial Corp	9/25/72	9789	10/4/72	9803
EXG Services Inc.	3/28/73	10066	4/6/73	(1)
EPG Computer Services, Inc.	4/11/74	10732	4/20/74	(1)
E T & T Leasing Inc.	4/30/74	10762	5/9/74	(1)
Eastern & Pacific Industries Corp	7/13/71	9249	7/22/71	(1)
Ebinger Baking Co.	4/11/74	10732	4/20/74	(1)
Ecological Science Corp	5/25/71	9188	8/6/71	9274
	8/17/71	9300	12/18/72	9901
Ecology Development Corp	1/3/74	10581	1/12/74	(1)
Ecology Inc.	2/27/74	10660	3/8/74	(1)
Ecom- Systems Inc.	6/25/73	10237	7/4/73	(1)
El Camino Financial Corp	6/22/73	10235	7/1/73	(1)
Eldredge & Co., Inc.	9/27/73	10410	10/6/73	(1)
Electro-Nucleonics, Inc.	3/22/67	8048	4/25/67	8056
Electrogasdynamics Inc	2/26/74	10657	3/7/74	(1)
Electrogen Industries, Inc.	12/18/68	8473	6/15/69	8623
Formerly Jodmar Industries, Inc. (susp. 9/11/67 -- 11/15/67)				
Electronic Agricultural Machinery Development Corp.	SEE: Zenith Development Corp.			
Electronic Concepts Labs	4/13/73	10110	5/22/73	10165
Electrospace Corp	3/12/74	10679	4/20/74	10765
Eleven Productions, Inc.	12/22/69	8783	12/31/69	(1)
Elktron Company (the)	4/18/66	7866	7/6/66	7913
Empire International, Inc.	4/11/74	10732	4/20/74	(1)
Empire Petroleum Co.	4/1/65	7565	4/5/65	(1)
Environmental Dynamics, Inc.	4/11/74	10732	4/20/74	(1)
Environmental Services Inc.	8/3/73	10321	8/12/73	(1)
Environonics, Inc.	5/14/74	10801	5/23/74	(1)
Equity Funding Corp of America Inc.	3/28/73	10064		
Equity Group, Inc.	12/4/69	8768	12/13/69	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
FAIM Information Services, Inc.	9/12/73	10385	9/21/73	(1)
FAS International, Inc.	5/27/71	9193	11/22/71	9394
Fairfield General Inc.	10/31/73	10470	11/9/73	(1)
Falcon Speedways Corp.	12/9/69	8775	12/18/69	(1)
Fall River Industries, Inc.	4/11/74	10732	4/20/74	(1)
Fanfare Corp.	6/25/74	10877	7/4/74	(1)
Fastline, Inc.	11/9/67	8190	7/19/68	8355
Federal Hydronics Inc.	8/1/73	10315	8/10/73	(1)
Federal Oil Company	5/20/69	8611	6/18/69	8616
	6/19/69	8632	10/16/69	8716
Federated Franchises Inc.	7/26/73	10301	8/4/73	(1)
Federated Purchaser Inc.	8/6/69	8665	10/5/69	8705
Fibrothane Industries Corp.	8/17/72	9737	9/15/72	9779
First Fidelity Company	3/27/72	9562	6/4/72	9628
First Home Investment Corp. of Kansis, Inc.	6/1/73	10190	6/10.73	(1)
First Leisure Corp.	9/28/72	9799	11/1/73	10474
First National Corp.	9/6/72	9763	9/15/72	
First Standard Corp.	9/19/66	7958	10/24/66	7980
First Wisconsin Mortgage Trust	6/13/74	10855	6/22/74	(1)
First World Corp.	5/10/72	9599	5/4/73	10137
Fisco, Inc.	6/17/74	10861	6/26/74	(1)
Florida D & M Co.	4/26/72	9589	5/5/72	(1)
Flying Diamond Corp.	6/22/73	10232	7/1/73	10249
Fotochrome, Inc.	10/9/64	7441	10/29/64	7451
	12/23/65	7777	1/21/66	7801
Four Seasons Equity Corp.	7/17/72	9680	7/26/72	(1)
Four Seasons Nursing Centers of America, Inc.	5/13/70	8883	7/24/70	8938
	7/17/72	9680	7/26/72	(1)
Franklin Industries, Inc.	2/27/74	10660	3/8/74	(1)
Franklin National Bank	5/13/74	10794	10/31/74	11078 preferre
	5/16/74	10830	10/31/74	11078 debentur
Franklin New York Corp	5/13/74	10794	10/31/74	11078 com & pr
	5/16/74	10811	10/31/74	11078 notes
Franz Hubinger A.G. Inc.	9/12/73	10390	9/21/73	(1)
Frasure Hull H lding Corp.	7/1/70	8919	7/10/70	(1)
Fulton National Group, Inc.	1/18/74	10608	1/27/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Gail Roberts Inc	2/28/74	10662	3/9/74	(1)
Gale Industries, Inc.	10/25/68	8435	11/10/69	8446
Ganna Process Co., Inc.	2/21/74	10651	3/2/74	(1)
General Gilbert Corp.	6/25/73	1-237	7/4/73	(1)
General Shelter Corp.	7/20/73	10290	7/29/73	(1)
Geon Industries, Inc.	3/1/74	10664	4/29/74	10760
Geonics, Inc.	10/21/69	8725	10/30/69	(1)
Georgia Factors Inc.	4/26/73	10128	5/5/73	(1)
Giant Stores Corp.	4/27/73	10131	1/1/74	10578
Gilbert Co. (A.C.)	4/11/66	7861	4/30/66	7881
Glas-Foam Corp	10/7/69	8715	10/16/69	(1)
Glen Explorations Inc.	6/28/73	10248	7/7/73	(1)
Globa Inc.	10/11/73	10435	10/20/73	(1)
Globus International Ltd	11/9/70	9019	11/28/70	9027
Go Publishing Co., Inc.	12/19/73	10568	12/28/73	(1)
Gold, Judith Corp	5/7/74	10779	5/16/74	(1)
Golden Age Mines Ltd	5/6/68	8307	10/2/68	8417
Goldfield Corporation	6/22/67	8108	7/2/67	8112
Goldfield Deep Mines Co. of Nevada	7/17/74	10918	7/26/74	(1)
Goodway Copy Centers, Inc.	4/11/74	10732	4/20/74	(1)
Goodway, Inc.	10/10/72	9809	7/16/73	10285
Gourdine Systems, Inc.	5/7/73	10138	5/16/73	(1)
Granby Mining Co., Ltd	2/20/74	10649	3/20/74	10689
Graphic Scanning Corp	5/19/72	9613	5/23/72	9615
Gray Line Corp.	11/7/69	8744	11/16/69	(1)
Great American Industries Inc.	3/31/66	7850	4/14/66	7863
	4/29/66	7881	10/23/66	7978
Great Lakes Medico Products	5/2/73	10134	5/11/73	(1)
Great Northern Inc.	2/6/73	9992	2/15/73	(1)
Great Republic Financial Corp	6/29/73	10256	7/8/73	(1)
Greater Continental Corp	9/27/73	10410	10/6/73	(1)
Greater Washington Investors, Inc.	11/7/74	11091	12/26/74	11154
Grimes Consolidated, Inc.	4/11/72	9570	4/20/72	(1)
Guenther Systems Inc.	4/11/74	10732	4/20/74	(1)
Gulf Aerospace Corp	4/21/69	8582	5/3/69	8588
Gulf South Mortgage Investors	5/31/74	10837	6/9/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
H.R. Weissberg Corp	SEE: Weissberg. (H.R.) Corp.			
Halbern Industries, Inc.	12/9/69	8775	12/18/69	(1)
Hamilton Life Insurance Co of New York	2/2/68	8250	2/11/68	(1)
Hanley Consolidated Inc.	10/3/73	10418	10/12/73	(1)
Harvard Industries, Inc.	11/27/74	11119	12/6/74	(1)
Harvest Markets Inc.	2/21/74	10651	3/2/74	(1)
Harvey, (Walter) Corp	2/27/74	10659	3/8/74	(1)
Health Evaluation Systems, Inc.	6/25/70	8913	7/4/70	(1)
Heidler Corp.	4/11/74	10732	4/20/74	(1)
Hemisphere Hotels Corp	4/11/74	10732	4/20/74	(1)
Henry's Drive-In Inc.	5/15/73	10149	5/24/73	(1)
Hershberger Enterprises, Inc.	7/2/74	10896	7/11/74	(1)
Hetra Computer & Communications Industries, Inc.	7/6/73	10271	7/15/73	(1)
Hi-Plains Enterprises Inc.	8/3/73	10321	8/12/73	(1)
Hoe, R. & Co., Inc.	7/2/69	8646	7/11/69	8648
Hoffman of Newark	1/3/74	10581	1/12/74	(1)
Holloway Western Corp	1/30/74	10623	2/8/74	(1)
Hollywood (International) Studios	4/28/72	9591	5/7/72	(1)
Home-Stake Production Co.	8/8/73	10333-10347	5/17/74	10798
Horizon Industries, Inc.	6/26/73	10241	7/5/73	(1)
Hotel, Inc.	7/13/71	9248	7/22/71	(1)
Hubinger (Franz) A G Inc.	SEE: Franz Hubinger A G Inc.			
Hydro Ski International Corp.	4/11/74	10732	4/20/74	(1)
Hydroplex Corp.	10/11/73	10435	10/20/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
I.D. Precision Components Corp.	7/31/73	10310	8/9/73	(1)
I.E.A. Corp	11/13/73	10494	11/22/73	(1)
IFC Collateral	5/1/73	10133	5/10/73	(1)
IMC International Inc.	8/3/73	10321	8/12/73	(1)
I.S. Industries Ltd	12/12/73	10553	12/21/73	(1)
I-T-E Imperial Corp	11/15/74	11107	12/12/74	11139
ITI Electronics Inc.	1/3/74	10581	1/12/74	(1)
Iberia International Brands, Inc.	12/12/74	11137	12/21/74	(1)
Idamont Oil & Mining Co.	6/23/65	7633	7/26/65	7656
Illinois Capital Investment Corp	5/7/73	1-138	5/16/73	(1)
Illustrated World Encyclopedia	7/14/72	9677	7/28/72	9704
Imperial Investment Corp	2/10/70	8814	2/19/70	(1)
Indecon, Inc.	3/5/73	10032	3/14/73	10044
Industrial Enterprises, Inc.	3/5/62	?	10/30/62	?
Industrial Manufacturing Co	5/25/71	9187	6/3/71	(1)
Industries International, Inc.	3/28/73	10067		
Inglewood Gasoline Co	1/26/68	8245	2/14/68	8254
Inland Systems Inc.	5/7/73	10138	5/16/73	(1)
Input Inc.	6/12/73	10216	6/21/73	(1)
Insurance Industries Inc.	1/3/74	10581	1/12/74	(1)
Inter-Island Mortgage Corp.	5/5/72	9600	7/28/72	9699
Interamerican Industries, Ltd	5/19/67	8080	2/2/68	8237
Intercontinental Industries, Inc	6/26/69	8640	7/26/69	8657
International Assemblix Corp	6/28/73	10250	7/7/73	(1)
International Chemical Development	7/26/74	10931	8/4/74	(1)
International Controls Corp	11/27/72	9887	11/30/72	(1)
International Development Corp	6/26/73	10240	7/5/73	(1)
International Hydrolines, Inc.	4/11/74	10732	4/20/74	(1)
International Professional College, Inc.	4/19/72	9580	4/28/72	(1)
International Scanning Devices,	6/15/70	8903	6/24/70	(1)
	7/26/74	10931	8/4/74	(1)
International Shelters, Inc.	8/26/71	9318	9/4/71	(1)
International Systems Assoc.,Ltd	7/11/73	10278	7/20/73	(1)
Interstate Computer Services Inc	8/3/73	10321	8/12/73	(1)
Investors Funding Corp of N.Y.	5/1/73	10133	5/10/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
J B & T Co.	2/9/70	8813	2/18/70	(1)
	6/8/73	10215	6/17/73	(1)
Jacobs, F.L. Company	2/11/59	5881	12/17/59	6144
Jade Oil & Gas Co.	6/9/67	8100	8/2/67	8138
Jefferson National Equities Corp	4/26/73	10128	5/5/73	(1)
Jefferson National Trust	7/5/73	10269	7/14/73	(1)
Jerome Mackey's Judo Inc	SEE: Mackey's Jerome Judo Inc.			
Jodmar Industries, Inc	9/11/67	8156	11/15/67	8192
SEE: Electrogen Industries, Inc (sus. 12/18/68 - 6/15/69)				
Johnny Unitas Quarterback Clubs, Inc.	7/18/73	10287	7/27/73	(1)
Jonker Corp	9/29/69	8709	10/8/69	(1)
Judith Gold Corp	5/7/74	10779	5/16/74	(1)
Judo, Inc.	SEE: Mackey's, Jerome Judo, Inc.			
Juneau Industries, Inc.	4/11/74	10732	4/20/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Kashmir Oil, Inc.	1/11/68	8227	3/23/68	8275
Kennebec Consolidated Mining	6/26/68	8346	8/4/68	8365
Kennedy (Spencer) Laboratories	4/11/74	10732	4/20/74	(1)
SEE: Spencer Kennedy Lab., Inc.				
Kent Industries Inc.	8/8/73	10330	8/17/73	(1)
Korecorp Industries Inc.	8/8/73	10332	1/24/74	10609
Korn/Ferry International	8/14/74	10972	8/23/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
LDS Dental Suppliers, Inc.	5/31/72	9624	11/16/72	9866
Ladd Mountain Mining Co	5/27/71	9194	6/5/71	(1)
Lamp Fashion Inc.	2/21/74	10651	3/2/74	(1)
Land & Leisure Inc.	6/18/73	10223	6/27/73	(1)
	1/24/74	10615	2/2/74	(1)
Langis Silver & Cobalt Mining	10/3/73	10418	10/12/73	(1)
Laser Sciences Inc	2/27/74	10660	3/8/74	(1)
Leader International Industries	8/13/74	10964	8/22/74	(1)
Leasing Consultants, Inc.	7/28/70	8944	8/26/70	8965
Lee, Nancy Mines, Inc	SEE: Nancy Lee Mines, Inc.			
Leeds Shoes, Inc.	12/12/67	8205	9/23/68	8412
Leisure Concepts Inc.	7/26/72	9697	10/3/72	9802
Leisure Living Communities, Inc.	10/12/71	9371	11/1/71	9381
Les Studs Corp	12/11/69	8776	12/20/69	(1)
Levitz Furniture Corp	6/1/72	9626	6/5/72	9630
Libco Corp	6/6/74	10843	6/15/74	(1)
Liberty Equities Corp	7/28/69	8660	12/4/69	8763
Liberty Investors Life Insurance	2/23/73	10015	3/4/73	(1)
Life of Kentucky Financial Corp	4/11/74	10732	4/20/74	(1)
Lilac Time, Inc.	1/5/73	9928	4/24/73	10122
Lincoln Printing Co	8/1/66	7925	7/11/67	8116
Liquid Optics Corp	9/18/69	8699	1/15/70	8796
Lloyd, Brian Inc.	SEE: Brian Lloyd, Inc.			
Locating Devices, Inc.	3/22/73	10056	3/31/73	(1)
Logos Development Corp	2/14/73	10005	7/3/73	10261
Long Island Plastics Corp	3/23/71	9119	4/1/71	(1)
Lookout Mountain Mining & Milling Co.	5/7/74	10779	5/16/74	(1)
Lynn, Anita Cosmetics, Inc.	SEE: Anita Lynn Cosmetics, Inc.			
Lyntex Corp	7/26/73	10302	8/4/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
MSI Corp	8/3/71	9276	8/12/71	(1)
	8/8/73	10330	8/17/73	(1)
Mackey's, Jerome Judo Inc.	5/10/73	10143	8/27/73	10364
Madjac Data Co., Inc.	6/24/73	10256	7/8/73	(1)
Majestic Capital Corp	11/21/68	8458	5/6/69	8589
Major D Corp	12/6/72	9898	12/15/72	(1)
Malaker Corp	7/5/73	10269	7/14/73	(1)
Management Dynamics, Inc.	12/8/72	9904	3/21/73	10047
Manati Industries Inc.	2/21/74	10651	3/2/74	(1)
Marcon Electronics Corp	1/23/73	9962	2/1/73	(1)
Marketing Communications, Inc	10/17/72	9826	11/14/72	9858
Marrud, Inc.	12/28/65	7778	1/16/66	7796
Mastercraft Electronics Corp	8/15/68	8385	9/21/68	8407
McGuire, Chris Inc.	SEE: Chris McGuire Inc.			
Mechanical Enterprises Inc	7/26/73	10302	8/4/73	(1)
Mediatrics, Inc.	11/20/73	10515	11/29/73	(1)
Medical Electroscience, Inc.	1/19/68	8236	1/26/68	(1)
Medical Investment Corp	6/23/71	9226	7/2/71	(1)
Medichek Inc.	7/12/73	10281	7/21/73	(1)
Mega Systems, Inc.	4/11/74	10732	4/20/74	(1)
Memory Magnetics International	SEE: Comstock-Keystone Mining Co. (Comstock had changed its name to Memory during the trading suspension)			
Meridian Fast Food Services	SEE: Radiation Service Associates, Inc.			
Mesur-matic Electronics, Inc.	1/26/68	8246	2/4/68	(1)
Met Sports Centers, Inc.	12/9/69	8775	12/18/69	(1)
	2/1/73	9980	2/10/73	(1)
Meter Maid Industries Inc.	4/12/68	8297	4/18/68	(1)
Metromodular Systems, Inc.	4/11/74	10732	4/20/74	(1)
Michelle Enterprises, Ltd	12/22/69	8783	12/31/69	(1)
Microbiological Sciences, Inc.	2/20/69	8538	3/9/69	8544
Mill Factors Corp.	2/12/69	8526	3/9/69	8545
Minute Approved Credit Plan, Inc.	9/1/72	9758	2/2/7/73	10019
Modular Dynamics Inc.	12/19/73	10568	12/28/73	(1)
Monarch Electronics International	12/9/69	8772	12/18/69	(1)
Monarch General Inc.	11/2/71	9346	2/19/73	10010
	6/20/74	10868	6/29/74	(1)
Monmouth Industries Inc.	6/22/73	10236	7/1/73	(1)
Montana Western Oil & Gas Co	12/4/69	8767	12/13/69	(1)
Mooney Aircraft, Inc.	10/18/68	8431	3/16/69	8548
Mountain Equities Inc.	12/4/73	10536	12/13/73	(1)
Mountain States Develop. Co.	8/28/68	8396	4/28/69	8583
Multitech Inc.	7/6/73	10271	7/15/73	(1)
My Toy Co., Inc.	1/3/74	10581	1/12/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
agler Helicopter, Inc.	6/19/68	8338	6/28/68	(1)
ancy Lee Mines, Inc.	5/7/74	10779	5/16/74	(1)
National Alfalfa Dehydrating and Milling Co.	2/5/74	10630	5/1/974	10804
National Computer Services Corp	1/24/74	10615	2/2/74	(1)
National R.T. Corp	4/11/74	10732	4/20.74	(1)
SEE: R.T. National Corp.				
National Environment Ckrp	6/13/73	10219	6/22/73	(1)
National Filtronics, Inc.	7/5/73	10269	7/14/73	(1)
National Health Services Inc.	10/12/73	10437	10/21/73	(1)
National Identification Card Co.	4/11/74	10732	4/20/74	(1)
National Institute for Better Reading, Inc.	6/13/73	10219	6/22/73	(1)
National Radio Company, Inc.	4/11/74	10732	4/20.74	(1)
National Sweepstakes Corp	5/8/68	8309	8/5/68	8396
National Tape Corporation	8/31/71	9323	9/9/71	(1)
Naturiser, Inc.	1/12/70	8800	1/21/70	(1)
	9/10.74	11009	9/19/74	(1)
New Era Mines, Inc.	5/7/74	10779	5/16/74	(1)
J.J. Newberry Co.	5/24/67	8084	5/25/67	8085
Nicoa Corp	6/18/74	10864 10888		
Noramco, Inc.	12/23/65	7777	1/24/66	7801
Norsul Oil & Mining, Ltd.	1/27/69	8504	2/25/69	8527
North American Building Tech. Inc.	9/12/73	10385	9/21/73	(1)
North American Planning Corp	7/24/72	9693	11/20/72	9868
North American Research & Dev.	7/20/67	8130	3/30/68	8276
North American Resources Corp	9/30/71	9356	10/9/71	(1)
	6/4/73	10198	6/13/73	(1)
Northern Instrument Corp	4/22/67	8061	8/11/67	8142
Nova Equity Ventures Inc.	12/4/72	9892	3/13/73	10036
Nucleonic Corp. of America	6/2/67	8095	6/25/67	8107
Nylo-Thane Plastics Corp	4/28/67	8065	5/27/67	8089
	12/8/67	8203	12/12/67	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Ocean Data Industries, Inc.	10/21/69	8724	10/30/69	(1)
Oceanography Mariculture	9/27/72	9794	10/31/72	(1)
Offshore Sea Developement Corp	7/19/73	10288	7/28/73	(1)
Okuraya/Davos International Inc.	12/12/74	11137	12/21/74	(1)
Old Town Corp	5/22/73	10166	6/10/73	10211
Omega Alpha Inc.	11/7/73	10479	1/15/74	10595
Omega Equities Corp	12/20/68	8474	4/28/69	8584
Omni-RX Health Systems	10/5/73	10425	10/14/73	(1)
Open Road Industries, Inc.	8/29/74	10994	9/7/74	(1)
Optronics Systems, Inc.	12/4/73	10536	12/13/73	(1)
Orecraft, Inc.	4/5/73	10082	9/1/73	10369
Oretek, Inc.	10/21/69	8727	10/30/69	(1)
Osterloh & Durham Insurance Brokers of North America, Inc.	12/10/74	11130	12/19/74	(1)
Otis Oil & Gas Corp	10/15/70	8999	10/24/70	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
PMC - Powdered Metals Corp	6/22/73	10235	7/1/73	(1)
Pace Industries Inc.	6/28/73	10250	7/7/73	(1)
Pacer Corp	6/1/73	10191	8/19/73	10345
Pacific American Oil Corp	2/2/72	9479	2/11/72	(1)
Pacific Fidelity Corp	8/18/69	8669	12/5/69	8765
Pakco Companies Inc.	12/20/66	8010	12/21/67	8215
Paradox Production Corp	2/20/73	10012	3/1/73	(1)
Paragon Securities Co.	6/13/73	10220	8/11/73	10323
Paramount General Corp	6/7/68	8329	11/9/68	8441
Parkview-Gem Inc.	12/13/73	10558	12/22/73	(1)
Parvin/Dohrman Co	5/6/69	8600	5/11/69	8606
Patterson Corp	11/21/73	10517	4/13/74	10730
Pelorex Corp	1/16/73	9955	9/2/73	10365
Penn Tech Corp	5/7/73	10138	5/16/73	(1)
Pennsylvania Life Co	10/10/73	10428	10/25/73	10452
Penrose Industries Corp	7/28/67	8137	12/31/67	8214
Permaspray Manufacturing Corp	4/17/70	8868	4/26/70	(1)
Personnel Consultants Inc	1/25/74	10616	2/3/74	(1)
Petro Silver Inc.	8/23/73	10361	9/173	(1)
Petroleum Development Corp	12/18/73	10563	12/27/73	(1)
Philipsborn Inc.	1/9/74	10589	1/18/74	(1)
Philpot, R.D. Industries Inc	5/19/71	9181	5/18/71	(1)
	6/28/73	10250	7/7/73	(1)
Photo Magnetic Systems Inc	12/18/73	10564	12/27/73	(1)
Photo Mark Computer Corp	4/10/69	8570	6/28/69	8631
Photon Inc	3/26/73	10061, 10084	7/23/73	10291
Photosystems Corp	4/11/74	10732	4/20/74	(1)
Pickwick Organization Inc	5/15/73	10149	5/24/73	(1)
Picture Int[illegible] Computer Corp	10/23/70	9008	12/4/70	9035
Pied Piper [illegible] Charters Corp	6/22/71	9225	7/2/71	(1)
Pinal County Association (Industrial Revenue Bonds)	11/1/65	7735	6/1/67	8094
Planet Oil and Mineral Corp	6/20/68	8339	7/17/68	8353
Plant Industries, Inc	1/30/70	8810	2/4/70	(1)
Players Group Companies Inc	8/1/73	10315	8/10/73	(1)
Portafone Corp of Arizona	12/21/73	10573	12/30/73	(1)
Potter Instrument Company Inc	12/19/74	11145	12/28/74	(1)
Powdered Metals Corp SEE: PMC	6/22/73	10235	7/1/73	(1)
Power Conversion, Inc.	10/6/72	9810	2/16/73	10002
Prairie Petroleum Inc	7/3/74	10901	7/12/74	(1)
Precision Microwave Corp	4/4/62	6973	12/19/62	6973
Precision Sound Centers, Inc.	3/2/72	9520	3/11/72	(1)
Professional Health Services, Inc.	11/13/69	8749	11/22/69	(1)
Programming Sciences Corp	7/20/73	10290	7/29/73	(1)
Progressive National Industries, Inc	7/6/73	10271	7/15/73	(1)
Proof Lock International Corp	3/5/73	10030	7/12/73	10273
Prosper Oil & Mining Co	9/21/62	?	12/19/62	?
Purification Systems Inc (Mich)	12/12/73	10554	12/21/73	(1)
Pyramid Communications Inc	3/16/72	9540	3/25/72	(1)
	5/7/73	10138	5/16/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Quad Metals Corp	6/14/73	10221	6/23/73	(1)
Quotamation Inc.	12/4/73	10536	12/13/73	(1)
Quote Co. of America Inc.	6/14/73	10221	6/23/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
R.T. National Corp	4/11/74	10732	4/20/74	(1)
Radiation Service Assoc, Inc (Formerly Meridian Fast Food	2/16/72	9501	7/29/73	10300
	Services, Inc.)			
Radioptics Inc.	7/18/73	10287	7/27/73	(1)
Rajac Industries Inc	6/26/69	8639	1/21/70	8798
Ram Tool Corp	4/11/74	10732	4/20/74	(1)
Rand Development Corp	1/20/67	8026	5/28/67	8081
Reclamation Systems, Inc.	7/8/71	9246	7/27/71	
	12/11/73	10546	12/20/73	(1)
Republic Color, Inc.	4/11/74	10732	4/20/74	(1)
Republic National Life Insurance	2/7/74	10633	4/7/74	10719
Research Games Inc	8/7/72	9722	9/15/72	9780
Revenue Properties Co., Ltd	11/19/69	8754	12/9/69	8762
	8/23/72	9744	9/1/72	(1)
Ridge Bio-Laboratories Inc	7/24/73	10293	8/2/73	(1)
Rietz Industries, Inc.	12/22/69	8783	12/31/69	(1)
Roberts,Gail Inc	SEE: Gail Roberts Inc.			
Rollins Rapid ReproFranchises	12/6/72	9897	12/15/72	(1)
Rolls-Royce, Ltd	3/10/71	9104	3/19/71	(1)
Roosevelt Field, Inc.	5/5/65	7594	5/14/65	(1)
Roosevelt Marina Inc.	10/19/72	9828	11/24/72	9881
Roto-American Corp	8/10/67	8143	4/14/68	8292
Rover Shoe Co	12/13/67	8211	10/1/68	8415
Royal Airline Inc	1/30/73	9976	2/8/73	(1)
Royal Atlas Corp	6/29/73	10256	7/8/73	(1)
Royal Properties, Inc.	6/8/73	10210	6/17/73	(1)
	6/22/73	10234		
Royston Coalition Mines, Ltd	6/10/68	8330	10/10/68	8419

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Durst & Co., Inc	4/11/74	10732	4/20/74	(1)
SEE: Durst, S.F. & Co., Inc.				
S & H Industries, Inc.	2/9/70	8813	2/18/70	(1)
S & P National Corp	5/12/67	8077	9/4/67	8153
Sandia International Metals Corp	6/13/73	10219	6/22/73	(1)
Sanitas Service Corp	9/24/73	10403	12/2/73	10524
Santa Fe International Inc	1/15/68	8230	3/30/68	8284
Satellite Systems Corp	5/6/71	9167	5/15/71	(1)
Sav-On Inc.	5/23/73	10169	6/1/73	(1)
Savoy Industries, Inc.	9/3/74	10998	11/25/74	11116
Sawyer-Adecor International, Inc.	4/11/74	10732	4/20/74	(1)
Sayre and Fisher Co	11/21/73	10516	11/30/73	(1)
Scientific Control Corp	6/28/73	10248	7/7/73	(1)
Scientific Incineration Devices	5/7/73	10138	5/16/73	(1)
Scientific Resources Corp	8/24/72	9747	9/2/72	(1)
Scooper Dooper, Inc.	4/11/74	10732	4/30/74	(1)
Scotco Data Communications Inc	5/7/73	10138	5/16/73	(1)
Seaboard American Corp	11/28/73	10526	4/6/74	10720
Seaferro Inc.	6/13/73	10219	6/22/73	(1)
Securities of America Inc	6/26/73	10240	7/5/73	(1)
Seggos Industries, Inc.	7/31/73	10311	8/9/73	(1)
Select Enterprises, Inc.	4/2/70	8857	4/11/70	(1)
Servisco	5/6/74	10776	5/15/74	(1)
Sheffield Watch Corp	4/11/74	10732	4/20/74	(1)
Shore-Calnevar, Inc.	4/11/74	10732	4/20/74	(1)
Sibany Manufacturing Corp.	12/4/73	10536	12/13/73	(1)
Signal Silver-Gold, Inc.	5/7/74	10779	5/16/74	(1)
Silenus Corpq	3/2/74	10699	3/30/74	(1)
Silver Bowl, Inc.	5/7/74	10779	5/16/74	(1)
Silver Exploration Inc.	8/8/73	10331	8/17/73	(1)
Silver Gull Corp	1/30/74	10622	2/8/74	(1)
Silver Gull Oil & Gas Corp	1/30/74	10622	2/8/74	(1)
Silver Reef Mines Ltd.	6/28/73	10250	7/7/73	(1)
Silver Shield Corp	11/27/67	8196	12/27/67	8219
Site-Pac Industries, Inc.	4/11/74	10732	4/20/74	(1)
Ski Park City West, Inc.	4/11/74	10732	4/20/74	(1)
Somatronics, Inc.	4/10/74	10729	4/19/74	(1)
Sossin System Inc.	12/12/74	11137	12/21/74	(1)
South Central Industries Inc.	7/19/72	9687	7/28/72	(1)
Sovereign Industries, Inc.	12/6/72	9898	12/15/72	(1)
	5/7/74	10778	5/16/74	(1)
Space Data Industries, Inc.	10/21/69	8726	10/30/69	(1)
Spectrum, Ltd	3/31/71	9129	4/9/71	(1)
Spence & Green Chemical Co	1/12/73	9943	1/21/73	(1)
Spencer Kennedy Laboratories	4/11/74	10732	4/20/74	(1)
Spokane National Mines, Inc.	8/21/70	8966	8/30/70	(1)
	4/11/74	10732	4/20/74	(1)
Sports Arena, Inc.	12/7/66	8005	6/17/67	8102
Sports International Inc.	12/21/73	10572	12/30/73	(1)
Sports World Communications	6/12/73	10216	6/21/73	(1)
Sportsworld Properties, Inc.	6/14/74	10858	6/23/74	(1)
Standard Computer & Pictures Corp	12/24/69	8787	1/2/70	(1)
Standard Dredging Corp	5/14/74	10800	5/23/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Standard Life Corporation	4/25/74	10757	5/4/74	(1)
Standard Motels, Inc.	4/26/73	10128	5/5/73	(1)
Standard Systems International	11/8/73	10484	11/17/73	(1)
Stanndco Developers, Inc.	11/13/73	10495	12/12/73	10555
Stanwood Oil Corp.	9/6/68	8401	11/14/68	8444
Star-Glo Industries Inc.	12/20/72	9918	7/1/73	10251
Steel Crest Homes, Inc.	5/12/67	8077	10/4/67	8170
Stelber Industries, Inc.	12/19/74	11145	12/28/74	(1)
Stirling Homex Corp	11/21/72	9873	11/30/72	(1)
Stratton Group Ltd.	9/7/73	10378	7/26/74	10929
Subscription Television Inc	5/26/67	8088	10/24/67	8182
Suitomat Corp	10/16/73	10442	10/25/73	(1)
Superior Computer Corp	1/24/73	9958	2/2/73	(1)
Supreme Oil & Gas Corp	6/12/73	10216	6/21/73	(1)
Symmar, Inc.	4/11/74	10732	4/20/74	(1)
Syner Data Inc.	7/31/73	10310	8/9/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
TMA Co.	6/12/73	10216	6/21/73	(1)
TR-3 International Inc (Formerly Silver Gull Corp)	1/30/74	10622	2/8/74	(1)
Taco King Inc.	8/28/74	10988	9/6/74	(1)
Tanger Industries	4/26/73	10128	5/5/73	(1)
Tastee Freez Industries, Inc	5/18/72	9610	7/26/72	9695
Taxtronics, Inc.	9/16/63	7143	12/21/64	7484
Technical Resources Inc.	4/11/74	10732	4/20/74	(1)
	10/18/73	10444	10/27/73	(1)
Tel-A-Sign, Inc.	11/8/73	10486	3/26/74	10820
Telecheck International Inc	7/26/67	8132	9/19/67	8158
Telectro-Mek, Inc.	12/18/73	10564	12/27/73	(1)
Teleprompter Corp	7/16/73	10286	7/25/73	(1)
Teletronics Industries, Inc.	9/7/73	10379	11/11/73	10485
Telster, Inc.	4/11/74	10732	4/20/74	(1)
	2/4/69	8515	10/1/69	8706
Test Corp	9/24/71	9347	10/3/71	(1)
Texas Uranium Corporation	7/24/73	10293	8/2/73	(1)
Texon Energy Corp	11/5/68	8444	5/13/69	8602
Textured Products Inc.	6/26/74	10881	7/5/74	(1)
	2/13/73	10004	2/22/73	(1)
Tidal Marine International	3/26/73	10062	8/22/73	10356
Tilco, Inc.	11/13/72	9857	1/31/73	9975
	7/30/71	9269	8/9/71	(1)
Tintair, Inc.	12/4/73	10536	12/13/73	(1)
Top Notch Uranium & Mining Corp	4/28/69	8590	5/7/69	(1)
Topper Corp	10/15/68	8428	6/11/69	8617
Torginal Industries Inc.	2/9/72	9490	5/13/73	10144
Toth Aluminum Corp	10/11/73	10435	10/20/73	(1)
Tran-Aire Systems, Inc.	11/6/73	10477	11/15/73	(1)
Transbanc Dopositary Receipt & Funding Corp	12/6/72	9898	12/15/72	(1)
Transceiver Corp. of America	3/28/73	10068	4/6/73	(1)
Transco Industries Inc.	11/17/69	8752	11/26/69	(1)
Trans-East Air	3/17/70	8843	3/26/70	(1)
Trans National Communications	8/8/72	9725	1/4/73	9925
Trans-Pacific Development Corp	1/3/74	10581	1/12/74	(1)
Trans-Pacific Enterprises	12/22/69	8783	12/31/69	(1)
Transogram Co., Inc.	12/22/69	8783	12/31/69	(1)
Transvac Inc.	8/13/74	10964	8/22/74	(1)
Transwestern Oil & Gas Corp	4/26/73	10128	5/5/73	(1)
Travel Management Corp	SEE: Transco Industries, Inc.			
Triex International Corp	12/6/72	9897	12/15/72	(1)
Trionics Engineering Corp	12/15/72	9912	12/23/73	10371
Tycodyne Industries Corp	4/17/73	10113, 10130	10/13/73	10436
	7/12/73	10281	7/21/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
VTR Inc.	8/30/65	7692	5/30/66	7894
	2/1/73	9980	2/10/73	(1)
Vahlsing, Inc.	8/13/73	10338	8/22/73	(1)
Vanderbilt Gold Corp	9/20/73	10401	9/29/73	(1)
Vetco Offshore Industries	3/1/73	10024	3/6/73	(1)
Vipont Chemical Co	12/13/72	9907	12/22/72	(1)
Vipont Mining Co.	12/13/72	9907	12/22/72	(1)
Vitro Corp. of America	2/11/66	7822	(one day only)	(1)
Vodel Corporation	12/4/69	8768	12/13/69	(1)
Volume Merchandise	5/23/73	10169	6/1/73	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
S.-----	SEE: United States-----			
Vitra Jet Industries Inc.	1/7/70	8793	1/16/70	(1)
VIAC International Corp	7/12/74	10914	8/10/74	10960
Underwater Storage, Inc.	9/16/66	7956	8/3/67	8139
Underwriters Investment Co	3/17/70	8842	3/26/70	(1)
Unico American Corp	1/3/74	10581	1/12/74	(1)
Unitas, Johnny Quarterback Clubs Inc	SEE: Johnny Unitas Quarterback Clubs Inc.			
United America Group Inc.	5/1/74	10769	5/10/74	(1)
United Australian Oil, Inc.	1/16/69	8498	8/23/69	8666
United General Corp	2/26/74	10657	3/7/74	(1)
United Gibraltar Corp	10/31/73	10471	11/9/73	(1)
United Mines, Inc.	5/7/74	10779	5/16/74	(1)
United Security Life Insurance Co	2/2/66	7812	4/16/67	8055
United States Beryllium Corp	3/4/70	8833	3/13/70	(1)
United Stated Crown Corp	4/11/74	10732	4/20/74	(1)
United States Financial	12/5/72	9896	5/28/74	10822
United States National Bank of San Diego	10/24/73	10451	11/2/73	(1)
Universal Acceptance Corp	2/2/72	9479	2/11/72	(1)
Universal Acceptance Corp Int'l	2/2/72	9479	2/11/72	(1)
Universal Airlines Co	4/24/72	9584	5/13/72	9603
	4/11/74	10732	4/20/74	(1)
Universal Coverage Corp	12/22/69	8783	12/31/69	(1)
Universal Dynamics Inc.	6/28/73	10250	7/7/73	(1)
Uranium King Corp	1/19/68	8235	4/2/68	8285
Urban Computer Systems Inc.	2/26/74	10657	3/7/74	(1)
Utah-Idaho Consolidated Uranium	5/7/74	10779	5/16/74	(1)

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Yum-Yum International Restaurants	11/15/71	9389	11/24/71	(1)
Zenith Development Corp	5/2/74	10773		
(Formerly Electronic Agriculture Machinery Development Corp.)				
Zimoco Petroleum Corp	2/19/68	8259	9/2/68	8390

Name of Issuer	Date Commenced	1934 Act Release Number	Date Terminated	1934 Act Release Number
Wain Resources Inc.	7/26/73	10302	8/4/73	(1)
Walter Harvey Corp	2/27/74	10699	3/8/74	(1)
Webb & Knapp, Inc.	5/5/65	7594	5/14/65	7602
Weissberg H.R. Corp	4/11/74	10732	4/20/74	(1)
Westec Corp.	8/29/66	7495	5/4/69	8591
Western General Corp	7/12/74	10913	7/21/74	(1)
Western Land Corp	6/13/73	10219	6/22/73	(1)
Western Research &Development	12/12/74	11136	12/21/74	(1)
Westgate California Corp	5/11/73	10145	6/19/73	10228
	10/24/73	10451	11/2/73	(1)
	11/21/73	10518	9/6/74	11002
	9/9/74	11006		
White Electromagnetic Inc	4/26/68	8304	5/2/05	8305
Williams, R.C. & Co.	3/2/64	7258	3/6/64	7263
Winner Industries Inc.	4/18/74	10748		
World Acceptance Corp	4/19/72	9580	4/28/72	(1)
World Ecology R sources, Inc.	8/20/74	10976	8/29/74	(1)
World Wide Realty & Investing Corp	4/5/73	10083	4/14/73	(1)
Wrather Corp	4/11/66	7861	4/30/66	7881
Wyoming Nuclear Corporation	1/4/68	8225	3/16/68	8271

STATE OF NEW YORK
COUNTY OF KINGS SS:

Anda Baumanis, being duly sworn, deposes and says that she is not a party to this action, is over 21 years of age and resides at 243 West 99th Street, New York, New York and that on October 11, 1976 she served the within affidavit by mailing a true copy of the same to:

Frederick B. Wade
Securities & Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

/s/ Anda Baumanis
ANDA BAUMANIS

Sworn to before me this
11th day of October, 1976

/s/ A. S. Goldstein
Notary Public

AARON S. GOLDSTEIN
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SUPREME COURT OF THE UNITED STATES

No. 76-1607

SECURITIES AND EXCHANGE COMMISSION, *Petitioner*,

v.

SAMUEL H. SLOAN

ORDER ALLOWING CERTIORARI. Filed October 17, 1977

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. In addition to the questions presented by the petition the parties are requested to brief and argue the question of the possibility of mootness.

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IN THE

Supreme Court of the United States

October Term, 1977

No. 76-1607

SECURITIES & EXCHANGE COMMISSION,
Petitioner,

-against-

SAMUEL H. SLOAN,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR SAMUEL H. SLOAN IN RESPONSE

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BRIEF FOR SAMUEL H. SLOAN IN RESPONSE

OPINION BELOW

The opinion of the court of appeals (Pet. App. 3a-17a), as modified (Pet. App. 18a-20a), is reported at 547 F. 2d 152 (2d Cir. 1976).

JURISDICTION

The judgment of the court of appeals was entered on November 18, 1976 and a petition for rehearing was denied on January 24, 1977. On April 22, 1977 Mr. Justice Marshall extended the time in which to file a petition for a

writ of certiorari to and including May 15, 1977. The petition was filed on that date. Jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

1. Did the Securities & Exchange Commission exceed the authority given to it in §12(k) of the Securities Exchange Act which authorizes the Securities & Exchange Commission "summary to suspend trading in any security (other than an exempted security) for a period not exceeding ten days" when it suspended trading in a security for a period of more than a year by issuing a series of thirty-seven consecutive ten-day suspension orders?

2. Did this case become moot when each of the thirty-seven consecutive ten-day suspension of which review was sought had expired before the time the court of appeals made its decision declaring all but the first order to be invalid?

3. Were each of the consecutive ten-day trading suspension orders supported by substantial evidence and, if not, must they be vacated?

4. Does §12(k) of the Securities Exchange Act, which authorizes the Securities & Exchange Commission "summarily to suspend trading in any security" whenever "in its opinion the public interest and the protection of investors so require," constitute an unconstitutional delegation of legislative authority to an administrative agency and does it violate other provisions of the Constitution?

STATEMENT

This petition for a writ of certiorari seeks review of a decision by a court of appeals which reviewed a series of thirty-seven consecutive ten-day orders which suspended

trading in all securities of Canadian Javelin Ltd. These securities were listed on the American Stock Exchange. The court of appeals held all but the first of these thirty-seven trading suspension orders to be invalid and declared (Pet. App. 17a):

> "The S.E.C. is, therefore, directed to discontinue forthwith its adoption and use of successive ten-day suspension of trading orders to order the suspension of trading in a security for an extended period, i.e. in excess of ten days.
>
> It is so ordered."

In so doing, the court of appeals reached and agreed with one of a number of contentions the respondent, Samuel H. Sloan, had made in a series of suits and proceedings which he had brought challenging the validity of S.E.C. trading suspension orders. However, the court of appeals rejected two additional arguments advanced by Respondent. First, it held that there was sufficient substantial evidence to justify the S.E.C.'s initial ten-day trading suspension order (Pet. App. 11a). Second, it held that a single ten-day trading suspension order does not violate the Constitution. In the latter regard, the court of appeals stated (Pet. App. 17a):

> "For a single ten-day suspension no prior notice or a hearing is required because the proceeding is summary in nature and because the emergency aspect of the order, issued to protect the public interest and give protection to investors, makes it necessary."

The controversy which the petition brings before this Court arose out of the policies of the S.E.C. regarding trading suspensions, particularly suspensions of trading in securities of Canadian Javelin Ltd. Although page 9 of the petition states that between 1964 and November, 1976 the S.E.C.'s suspension power was used with respect to a total

of 941 securities, no security has been suspended on as many distinct occasions as Canadian Javelin Ltd. Canadian Javelin Ltd. and its principal stockholder, John C. Doyle, who at all times has owned approximately 20% of the stock in the company, have established considerable notoriety as a result of their continuing bouts with the S.E.C. spanning a period of more than twenty years. This notoriety has been enhanced by the publicity often given these matters by the financial news media.[1] To some extent, the running dispute between Canadian Javelin Ltd. and the S.E.C. stems from differences between Canadian and United States securities laws. Each province of Canada has its own securities laws and the pervasive national scheme of securities regulation which exists in the United States does not exist there. In a number of instances, officers of Canadian Javelin Ltd., none of whom are residents of the United States, have engaged in activities which are strictly legal in Canada but which, nevertheless, have been deemed by the S.E.C. to run afoul of federal securities law.[2]

1. See e.g. "Brash Entrepreneur: Canadian Javelin Has Never Earned a Lot But John Doyle Has," *The Wall Street Journal*, March 1, 1972, p. 1 col. 6; "Now You See It: Canadian Javelin Doesn't Have Gold Right in Panama, Nation Says; Firm Disputes That," *The Wall Street Journal*, October 25, 1973, p. 46 col. 1. The first of the above articles precipitated a sharp decline in the price of Canadian Javelin Ltd. leading to an S.E.C. trading suspension on March 7, 1972. The second caused the failure of Canadian Javelin Ltd. to open on the American Stock Exchange on October 25, 1973. A trading halt continued from that date until November 29, 1973, when the S.E.C. suspended trading.

2. For example, on July 14, 1976 Quebec Superior Court Justice Rejane L. Colas ordered that a special meeting of stockholders of Canadian Javelin Ltd. be held and that S.E.C. regulations including S.E.C. proxy rules be complied with "as far as practicable." The S.E.C. intervened and asked Justice Colas to reverse her decision but on July 29, 1976 she rejected the contentions of the S.E.C. and issued a decision stating that inasmuch as it was not "practicable" for Canadian Javelin Ltd. to comply with S.E.C. proxy rules, it need not do so. "John Doyle—Evil Genius," *Barron's*, August 16, 1976, p. 15, records the reaction of S.E.C. enforcement chief Stanley Sporkin to this development:

Pursuant to the Freedom of Information Act, Respondent has obtained from the S.E.C. copies of approximately 10,000 pages of documents relating to the S.E.C.'s twenty-year investigation of the affairs of Canadian Javelin Ltd. From reviewing this material and from examining documents filed in the course of more than twenty suits brought against Canadian Javelin Ltd. and its principal officers, Respondent has familiarized himself with the underpinnings of the ongoing dispute between the S.E.C. and Canadian Javelin Ltd.

Although Canadian Javelin Ltd. currently has approximately 13,000 stockholders in the United States, its shares were never sold to the American public through a lawful underwriting and no registration statement was ever filed by Canadian Javelin Ltd. to comply with the registration provisions of the Securities Act of 1933. Instead, starting shortly after the company was founded in 1951, its shares were distributed via a "boiler-room" operation in which high pressure salesmen operating in Canada telephoned United States investors and induced them to purchase Canadian Javelin Ltd. shares. As a result of this, on July 25, 1958 the S.E.C. placed Canadian Javelin Ltd. on its "Canadian Restricted List," otherwise known as the "S.E.C. blacklist." Although this action was taken prior to the 1964 amendment to the Securities Exchange Act which authorized the S.E.C. to suspend trading in securities traded over-the-counter, the blacklisting of Canadian Javelin Ltd. shares amounted to a trading suspension. On September 25, 1958, the S.E.C. filed a civil

" 'We are not going to take this lying down,' barked Sporkin. 'There were brazen acts conducted in Canada. The American stockholders are being put upon here.' "

While Sporking was making these remarks, the S.E.C. staff was telling the court of appeals that the instant case was moot because there was no reason to believe the S.E.C. would find it necessary again to suspend trading in Canadian Javelin Ltd.

suit alleging the above-described boiler-room operation and on the same day Canadian Javelin Ltd. and John C. Doyle consented to an injunction. See *S.E.C. v. Canadian Javelin Ltd.*, 1958 Civil Action File No. 138-85 (S.D.N.Y.). The terms of the consent decree were curious because the parties entered into an oral undertaking which was set forth at a hearing before Judge Sidney Sugarman under which, in return for the consent by Canadian Javelin Ltd. and Doyle to an injunction, the S.E.C. agreed to remove Canadian Javelin Ltd. from its Canadian Restricted List and Canadian Javelin Ltd. agreed to list its shares on the American Stock Exchange and to file 10-K reports with the S.E.C. as well as all other financial reports required by the S.E.C. to be filed by public corporations in the United States. The rationale for this was that at the time of this consent decree, John C. Doyle was a resident of the United States and Canadian Javelin Ltd. maintained its corporate headquarters in New York City and was only nominally incorporated in Canada. The listing on the American Stock Exchange became effective on June 26, 1959.

Subsequently, the situation changed. John C. Doyle jumped bail following an adverse court of appeals decision in *United States v. Doyle*, 348 F. 2d 715 (2d Cir. 1965) *cert. denied*, 382 U.S. 843 (1965). Doyle then fled to Canada where by that time Canadian Javelin Ltd. had moved its corporate offices. Since the act of which he had been convicted, namely mailing, in 1957, 50 shares of unregistered Canadian Javelin Ltd. stock, did not constitute a violation of Canadian law, he was considered by the U.S. Attorney's office to have committed a non-extraditable offense.[3] To this day, he is a fugitive from justice.

3. See "Doyle Out as Chief of Canadian Javelin," *The New York Times*, July 21, 1965, p. 47 col. 6.

After jumping bail, an act undertaken with considerable fanfare and publicity,[4] Doyle resigned as a corporate official. However, this caused adverse consequences and one year later Doyle re-assumed his position as chief executive officer of Canadian Javelin Ltd.[5] Not surprisingly, thereafter a state of continuing antagonism prevailed between the S.E.C. and Canadian Javelin Ltd., a company which was at that point being controlled by a person who had become a fugitive from justice as a result of being convicted of violating federal securities laws. On March 17, 1971, the S.E.C. issued the first of many ten-day trading suspension orders.[6]

The initial trading suspension order was renewed once so that the trading suspension in total duration lasted from March 17, 1971 until April 5, 1971.[7] Thereafter, trading was allowed to resume and continued until March 7, 1972,

4. "John Doyle Tells Why He Fled to Canada," *The New York Times*, July 26, 1965, p. 33, col. 4.

5. "Fugitive Financier Returns to Role at Javelin After Year Away," *The New York Times*, September 24, 1966, p. 27, col. 2; "Javelin Gives John Doyle Committee Chairmanship," *The New York Times*, September 26, 1966, p. 63, col. 4.

6. The release announcing the trading suspension stated that "the suspension was ordered because of the unavailability of adequate and accurate information concerning . . . mineral deposits within a mining concession in the Republic of Panama. . . . In recent weeks there have been widespread rumors concerning this concession and the price of securities of Canadian Javelin has increased on relatively high volume." Securities Exchange Act Release No. 9111 (March 17, 1971).

7. A lengthy release was issued by the S.E.C. announcing that the suspension would be terminated. This release warned that broker-dealers who solicit transactions in the securities of Canadian Javelin without first making a diligent inquiry in the Panamanian project, may be violating federal securities laws. Securities Exchange Act Release No. 9124 (March 30, 1971).

when the S.E.C. issued the first of a longer series of trading suspension orders lasting from that date until August 9, 1972.[8] With the termination of that series of suspension orders, trading again resumed in the normal manner on the American Stock Exchange and continued until November 29, 1973, when the S.E.C. again ordered a trading suspension[9] and this time simultaneously instituted a civil action entitled *S.E.C. v. Canadian Javelin Ltd.*, Docket No. 73 Civil 5047 (S.D.N.Y.).[10] This trading suspension continued until January 26, 1975.[11] At that point the S.E.C. allowed the suspension to terminate but on April 29, 1975 the S.E.C. commenced yet a fourth series of trading suspension orders[12] which continued until May 2, 1976.[13] At that point, the trading suspension again officially terminated. However, according to a memorandum dated July 1, 1975, a copy of which is included as Appendix A to this response, representatives of the American Stock

8. The release announcing the trading suspension stated that it "was ordered because of the unavailability of adequate and accurate information concerning certain actions taken by the government of Newfoundland with respect to the company's linerboard project." Securities Exchange Act Release No. 9528 (March 7, 1972). The subsequent release announcing the termination of the trading suspension contained a lengthy statement concerning the reasons for the suspension. Securities Exchange Act Release No. 9715 (August 3, 1972).

9. Securities Exchange Act Release No. 10534, 3 SEC Docket 154 (November 29, 1973).

10. The complaint is described in Litigation Release No. 6160, 3 SEC Docket 154 (November 29, 1973). That suit precipitated the filing of a class action which is the subject of a petition for a writ of certiorari presently pending before this Court. See *Sloan v. Bonime*, No. 77-374.

11. Securities Exchange Act Release No. 11172, 6 SEC Docket 53 (January 9, 1975); Securities Exchange Act Release No. 11178, 6 SEC Docket 78 (January 13, 1975); Securities Exchange Act Release No. 11197, 6 SEC Docket 145 (January 22, 1975).

12. Securities Exchange Act Release No. 11383, 6 SEC Docket 780 (April 29, 1975). (Appendix D, *infra*).

13. Securities Exchange Act Release No. 12393, 9 SEC Docket 509 (April 29, 1976).

Exchange had agreed to continue its trading suspension until such time as the S.E.C. was in a position to reveal the extent of a manipulation in the market for Canadian Javelin Ltd. shares. This assertion was repeated in subsequent memoranda. Accordingly, in spite of the fact that the S.E.C. terminated its suspension of trading in Canadian Javelin Ltd. on May 2, 1976, trading has to date not resumed on the American Stock Exchange. In addition, the S.E.C. has invoked Rule 15c2-11, 17 C.F.R. §240.15c2-11, to prohibit trading in Canadian Javelin Ltd. shares in the over-the-counter market. This rule, in pertinent part, provides that whenever a security has not been actively quoted in a "national quotations medium" for a period of more than three days, quotations may not resume until such time as the issuer of the security in question has filed current financial reports satisfactory to the S.E.C. and a registered broker-dealer applies for permission to commence active quotations in the security. On November 8, 1976, the S.E.C. commenced an action in the District Court for the District of Columbia entitled *S.E.C. v. Canadian Javelin Ltd., et al.* Civil Action No. 76-2070 in which the S.E.C. alleged that Canadian Javelin Ltd. was delinquent in filing its 10-K report.[14] Although Canadian Javelin Ltd. subsequently filed its delinquent 10-K report, the S.E.C. has since amended the complaint to allege that financial reports filed by Canadian Javelin Ltd. were improper and contained false and misleading statements.[15] Because of the S.E.C.'s interpretation and application of Rule 15c2-11, the continued pendency of this suit acts as a bar to the resumption of over-the-counter trading in Canadian Javelin Ltd.

14. See Litigation Release No. 7642, 10 SEC Docket 948 (November 10, 1976).

15. See Litigation Release No. 7779, 11 SEC Docket 1772 (February 14, 1977).

Altogether, the four periods during which trading in Canadian Javelin Ltd. has been suspended amount to slightly less than 33 months. Since the applicable provisions of the Securities Exchange Act gave the S.E.C. the authority to suspend trading in a security "for a period not exceeding ten days," the S.E.C. accomplished most of its 33-month trading suspension through its practice of tacking on an additional ten-day suspension at the time the ten-day suspension order then in effect was about to expire. According to the petition, the S.E.C. first adopted this procedure in 1944 (Pet. 7-8) and has since followed it in suspending trading in a total of 235 securities (Pet. 9) thereby lengthening the total duration of a trading suspension beyond the ten days permitted by statute. Perhaps the best known example of this concerned the securities of Continental Vending Machine Corp., which were suspended from trading for a 13 year period from March 8, 1963 until June 2, 1976.[16]

Respondent's efforts to have this practice declared illegal and to invalidate the trading suspension of securities of Canadian Javelin Ltd. on this and other grounds commenced on June 27, 1974, when Respondent instituted an action in the United States District Court for the Southern District of New York by filing a complaint which alleged that the S.E.C. had abused its discretion, acted illegally, and violated the constitutional rights of Respondent by suspending trading in Canadian Javelin Ltd. and a number of other securities. Subsequently, Respondent filed an amended complaint which alleged specifically that the S.E.C. had suspended trading in a total of 28 securities in which Respondent was a stockholder or a market maker, among them being Canadian Javelin Ltd. The S.E.C. filed an answer in which it admitted that it had suspended trading in the 28 securities in question and in which it

16. See Securities Exchange Act Release No. 12505, 9 SEC Docket 787 (June 2, 1976).

averred as affirmative defenses that the S.E.C. could not be sued *eo nomine*, that a district court has no jurisdiction over the S.E.C. and that the exclusive remedy of Respondent was to file a petition for review of each trading suspension order with a court of appeals. The district court agreed and dismissed the complaint and this dismissal was affirmed by the court of appeals. See *Sloan v. S.E.C.*, 535 F.2d 676 (2d Cir. 1976), *cert. denied* 429 U.S. 885 (1976).[17]

By this time, Petitioner had filed in the United States Court of Appeals for the Second Circuit a petition for review challenging the validity of the then current orders suspending trading in Canadian Javelin Ltd., the only one of the 28 securities in which Respondent had a financial interest which was still the subject of a current trading suspension order. Respondent's petition for review was filed on November 8, 1974. Under Rule 17(a) of the Federal Rules of Appellate Procedure, the S.E.C. had 40 days to file the record of the trading suspension orders challenged in the petition for review. The S.E.C. took the full 40 days and then filed only a certified list of the documents constituting the record. However, after Respondent complained to the court of appeals, the S.E.C. filed the full record of the trading suspension orders being challenged. By this time, the ten-day trading suspension orders of which review had been sought had long since expired and had been superceded by subsequent orders. On January 26, 1975, about the time the S.E.C. finally filed the record, it allowed its trading suspension in Canadian Javelin Ltd. to terminate. Shortly thereafter, the S.E.C. filed in the court of appeals a "suggestion" that the court dismiss the petition for review as "moot." The court of appeals did not act on that suggestion. Briefs were thereafter filed and on

17. The amended complaint in that action alleged violations of antitrust laws by certain private party defendants and, in addition, averred that S.E.C. Rule 15c2-11 and other rules were unconstitutional.

September 26, 1975 oral argument was held before the court of appeals. By that time trading in Canadian Javelin Ltd. shares again had been suspended, this time by a series of orders commencing on April 29, 1975 at 3:00 p.m. and renewed every ten days thereafter. In spite of the fact that a trading suspension of shares of Canadian Javelin Ltd. was then in effect, the S.E.C. argued before the court of appeals that the question of the validity of the prior trading suspension orders was moot because the orders then currently in effect were not part of the same series of orders which included the trading suspension orders which were challenged in the petition for review. Although the decision subsequently rendered by the court of appeals did not discuss the mootness question, it dismissed the petition for review "without prejudice" thereby making it clear that it did not agree with the S.E.C.'s contention that the question of the validity of the prior trading suspension orders was moot. See *Sloan v. S.E.C.*, 527 F.2d 11 (2d Cir. 1975) *cert. denied*, 426 U.S. 935 (1976).

The dismissal "without prejudice" by the court of appeals of the petition for review was apparently based on a statement made at oral argument by the attorney representing the S.E.C. which implied that the S.E.C. would be willing to grant Respondent "some sort of administrative hearing."[18] The court of appeals also stated that the record filed by the S.E.C., which consisted of summary trading suspension orders and expurgated memoranda similar to that included as Appendix A, was "insurmountably sparse."

18. Earlier during the same oral argument, when one of the members of the panel of the court of appeals first asked the attorney for the S.E.C. what remedy Respondent had, the attorney replied, "He doesn't have any." It was only after repeated questioning from the panel that the attorney for the S.E.C. felt obliged to soften his position and to assert that an administrative hearing would be available.

Immediately following this decision, Respondent wrote the S.E.C. and requested the promised administrative hearing. Approximately one month later, the S.E.C. responded with a letter which stated that it would not entertain this request in the absence of an affidavit setting forth the facts which Respondent intended to prove at the hearing and which demonstrated that the S.E.C. had abused its discretion in suspending trading in Canadian Javelin Ltd. On March 11, 1976, Respondent filed a "verified petition for review" which met the requirements described in the letter from the S.E.C. Thereafter, according to a memorandum dated April 9, 1976 which the S.E.C. included in the record it subsequently filed with the court of appeals, a copy of which is included as Appendix B to this response, the S.E.C. decided to adopt a procedure "whereby a person claiming to be adversely affected by a suspension could petition not to renew such a suspension." Although the adoption of this procedure had not been publicly announced, the S.E.C. relied upon it in its decision dated April 21, 1976 which denied Respondent's request for an administrative hearing and continued the suspension of trading in Canadian Javelin Ltd. for an additional ten-day period (See Pet. App. 21a-23a). The S.E.C. officially announced the adoption of this procedure the next day (See Pet. App. 24a-26a; Securities Exchange Act Release No. 12361, 9 S.E.C. Docket 482 (April 22, 1976)).

On April 23, 1976, immediately upon receipt of the order of the S.E.C. dated two days earlier denying Respondent's request for an administrative hearing, Respondent filed in the court of appeals a petition for review of each of the 37 consecutive orders which suspended trading in Canadian Javelin Ltd. beginning with the order dated April 29, 1975. At the same time, Respondent filed a motion for a stay, a proposed order to show cause, and a request for an ex-

pedited review of the S.E.C.'s trading suspension orders. Rather than respond in writing, an attorney for the S.E.C., without notifying Respondent, called the office of the clerk of the court of appeals and said that the court should not act on Respondent's motion because the S.E.C. had decided that it was going to terminate its trading suspension of Canadian Javelin Ltd. at the end of the current ten-day period. Respondent was not told about this telephone conversation at the time and neither he nor the public were informed that the S.E.C. intended to terminate its trading suspension until the S.E.C. announced this in a press release issued several days later.[19] As the result of the oral request by the S.E.C. attorney in question, the court of appeals never acted on Respondent's request for a stay and an expendited review. Instead, after several extentions of time granted at the request of the S.E.C., briefs were filed and the case was argued orally and the decision for which review is now sought followed.

ARGUMENT

I

It is submitted that this court should grant the petition for a writ of certiorari, but not for the reasons given in the petition. One of the two principal arguments given as reasons for granting the writ, namely the claim that this case is moot, is so meritless as to hardly warrant detailed discussion. The S.E.C. continues to argue that the question of the validity of the trading suspension orders is moot in face of the fact that, as Judge Gurfein noted during the oral argument before the court of appeals, this case is "just like the old Southern Pacific Terminal case," i.e. *Southern Pacific Terminal v. ICC*, 219 U.S. 498, 515 (1911) where this Court held that "short-term orders, capable of

19. See note 13, *supra*.

repetition yet evading review" would not be declared moot. The reason for this is obvious. If it were otherwise the S.E.C. in a case such as this would have the power to prevent review of its own trading suspension orders merely by allowing the suspension to terminate prior to the oral argument or the time of the decision by the court of appeals. Moreover, in this case both times that Respondent filed a petition for review of trading suspension orders, the S.E.C. took the full 40 days allowed by Rule 17(a) of the Federal Rules of Appellate Procedure prior to filing the record and resisted Respondents efforts to obtain expedited review. As a result of this, excepting the unlikely possibility that a court of appeals might be willing to review a trading suspension order prior to the filing of the record, it will be impossible as long as the S.E.C. adheres to its policy for a court of appeals to have the opportunity to review a trading suspension order while that order is still in effect. In other words, when the S.E.C. asks this court to declare this case to have been moot it is really asking this Court to declare that under no circumstances can an S.E.C. trading suspension order ever be reviewed by any federal court unless the S.E.C. specifically acquiesces to such review. This attempt to frustrate all judicial review of S.E.C. suspension orders cannot be permitted to succeed because otherwise the S.E.C. would have "a powerful weapon against public law enforcement." See *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953).

The facts of the instant case demonstrate the invalidity of the S.E.C.'s mootness argument. It was clear during the first oral argument before the court of appeals that the court was prepared to vacate the then current trading suspension order and would have done so had the attorney for the S.E.C. not claimed that the S.E.C. was prepared to grant "some sort of administrative hearing." Having gained this reprieve, the S.E.C. thereafter denied Respondent's initial written request for an administrative

hearing because it was not "verified or properly formulated" (Pet. App. 10a) as required by a procedure not yet promulgated. On March 11, 1976, Respondent submitted to the S.E.C. a "verified petition" which met all of the requirements of its still secret procedure. Thereafter, the S.E.C. issued four more ten-day suspension orders without taking action on Respondent's request for an administrative hearing.[20] Finally, in an obvious attempt to place the S.E.C. in the most favorable position or to avoid judicial review altogether without in any way voluntarily curtailing the exercise of its suspension powers, the S.E.C. denied Respondent's request for a hearing and suspended trading for one more ten-day period. Under governing principles set forth in *Roe v. Wade*, 410 U.S. 113, 125 (1973); *Sibron v. New York*, 392 U.S. 40, 50-58 (1968) and many other cases there can be no question that this case is not moot.

Moreover, as the court of appeals noted, "the issue of statutory construction and interpretation never became moot and has been ruled upon in this review" (Pet. App. 17a). It is evident that the issue of statutory construction is still not moot because by filing its petition for a writ of certiorari the S.E.C. has indicated desire to return to its practice of issuing consecutive ten-day suspension orders. Although it says it will perhaps not issue future consecutive orders suspending trading in Canadian Javelin Ltd., the petition specifically requests this Court to vacate the order of the court of appeals which ordered it to discontinue "its adoption and use of successive ten-day suspension orders" (Pet. App. 17a). Were this case truly moot, there would be no need for the S.E.C. to make this request. The "public interest in having the legality of the practices settled, militates against a mootness conclusion." *United States v.*

20. Those four orders suspended trading for ten-day periods commencing March 14, 1976, March 24, 1976, April 3, 1976 and April 13, 1976 respectively.

W.T. Grant Co., supra, 345 U.S. at 632. This case further cannot be declared moot in view of the principle that "voluntary cessation of allegedly illegal conduct . . . does not make the case moot," *Id.*, a principle upon which the S.E.C. often relies in prosecuting suits, including suits against Respondent, requesting an injunction. Of course, this principle need not be invoked here because here the allegedly illegal conduct, namely suspending trading in a security for successive ten-day periods, did not voluntarily cease but ceased at the order of the court of appeals.

The cases cited in the petition are not helpful to the S.E.C.'s position. For instance, the petition cites *S.E.C. v. Medical Committee for Human Rights*, 404 U.S. 403 (1972) (Pet. 12). However, that decision was explained in *Mancusi v. Stubbs*, 408 U.S. 204, 206 n. 1 (1972) where this Court stated that the case had become moot "not because of compliance by the S.E.C. with the judgment under review, but because of the action of Dow Chemical which was not required to do anything by that judgment." In view of this decision, the contention by the S.E.C. that the fact that it had ceased issuing a series of consecutive ten-day suspension orders in Canadian Javelin Ltd., but not in other securities,[21] prior to the November 18, 1976 decision by the court of appeals, is untenable.

As to the other cases cited in the petition, in arguing that the holding by the court of appeals "on the issue of mootness is sufficiently contrary to this Court's recent decisions to warrant summary reversal" (Pet. 12, n. 8), the S.E.C. finds it convenient to overlook a decision of this Court more recent than those cited which deals squarely with the issue, namely *Nebraska Press Association v.*

21. See e.g. Litigation Release No. 7650, 10 SEC Docket 980 (November 15, 1976), in which the S.E.C. announced that its suspension of trading in securities of Diversified Industries, Inc., which had commenced on June 10, 1976, would continue until November 16, 1976.

Stuart, 427 U.S. 539, 546 (1976), where this Court explained most of the cases cited in the petition and reiterated the principle that a case does not become moot "simply because the order attacked has expired, if the underlying dispute between the parties is 'capable of repetition, yet evading review'." Respondent was a broker-dealer registered with the S.E.C. until April 28, 1975 when the S.E.C. revoked his broker-dealer registration. As a registered broker-dealer, Respondent had occasion to deal in many securities and it is not surprising that among the 941 securities in which the S.E.C. has suspended trading were 28 securities in which Respondent had a financial interest. As Respondent set forth in an affidavit filed with the court of appeals in opposition to the S.E.C.'s motion in that court to dismiss this case as moot, Respondent continues to own stock in nearly 400 publicly traded corporations and in view of the S.E.C.'s proclivity for issuing trading suspension orders, it is apparent that it is only a question of time before the S.E.C. suspends trading in another security so as to adversely affect Respondent. This circumstance defeats the S.E.C.'s claim that Respondent "has not shown that he is likely to be adversely affected by consecutive suspension orders in the future" (Pet. 12).

Moreover, as Respondent pointed out to the court of appeals, in ordering Respondent's broker-dealer registration revoked, an order which was affirmed in another part of the decision of the court of appeals and which is now the subject of a pending petition for a writ of certiorari filed under No. 76-1547, the S.E.C. relied on a finding by Judge Ward that Respondent had a net capital deficiency of $4,383 on May 24, 1973. (See petition in No. 76-1547, Pet. App. 32a, n. 19 and *S.E.C. v. Sloan*, 369 F. Supp. 996, 1001 (S.D.N.Y. 1974)). However, that computation was based on a ruling by the S.E.C. dated June 8, 1973, which was applied retroactively by the S.E.C. staff in

computing Respondent's net capital, under which fails-to-deliver in suspended securities could no longer be counted as an asset in computing net capital.[22] Respondent had a fail-to-deliver amounting to $11,000 in the stock of Triex International Corp., a security which the S.E.C. suspended from trading from December 15, 1972 until December 23, 1973 through the use of consecutive ten-day suspension orders.[23] The figure of $11,000 was deducted by the S.E.C. staff from Respondent's net capital in order to arrive at the $4383 figure. In other words, had it not been for the trading suspension of Triex International Corp., which exceeded ten days, or had the S.E.C. not applied its June 8, 1973 interpretative release retroactively, Respondent's net capital in May, 1973 would have exceeded the net capital requirement.[24] Since the decision of the court of appeals can be taken to have the effect of declaring all successive ten-day trading suspension orders of the S.E.C. to have been invalid, it follows that the suspension for more than ten days of trading in Triex International Corp. was also invalid, which should form sufficient ground for vacating the order of the S.E.C. revoking Respondent's broker-dealer registration and remanding the case to the S.E.C., provided the order of the

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22. See "Interpretation of Rule 15c3-1 Respecting the Net Capital Treatment of Securities Positions and Transactions in Suspended Securities," Securities Exchange Act Release No. 10209, 1 SEC Docket, No. 19, p. 12 (June 8, 1973).

23. See Securities Exchange Act Release No. 9912 (December 12, 1972); Securities Exchange Act Release No. 10571, 3 SEC Docket 257 (December 19, 1973).

24. The S.E.C. also relied on a finding by Judge Ward of a net capital deficiency in August, 1973. Triex International Corp. was still suspended from trading in August, 1973 and consequently the same $11,000 was deducted in computing Respondent's net capital. Although the figure arrived at was more than $11,000, if full market value is given for certain securities erroneously valued at zero by the S.E.C. staff, Respondent will be shown to have had sufficient net capital in August, 1973 as well.

court of appeals invalidating the successive ten-day trading suspension orders in question is not reversed.

In an attempt to narrow the terrain in order to make its mootness argument seem more plausible, the S.E.C. contends that Respondent can show that this case is not moot only by demonstrating that he is likely to be adversely affected by future consecutive trading suspension orders *in Canadian Javelin Ltd.* The S.E.C. then asserts that "there is no reason to believe that it will be necessary to suspend trading again" in Canadian Javelin Ltd. (See Pet. 12). This statement is false. As noted previously, on November 8, 1976 the S.E.C. instituted an action in the District Court for the District of Columbia by filing a complaint which alleged that Canadian Javelin Ltd. was delinquent in filing its 10-K financial report with the S.E.C. That action was instituted ten days before the decision of the court of appeals of which the petition seeks review. Delinquency in filing a 10-K report with the S.E.C. is by far the most common reason given for a trading suspension order. For example, on April 11, 1974 the S.E.C. simultaneously suspended trading in securities of 48 companies and in each case the reason given for the trading suspension was the delinquency in a 10-K filing.[25] On many subsequent occasions a trading suspension has been ordered *en masse* for securities of numerous issuers which were delinquent in filing their 10-K reports such as on April 22, 1976 when the S.E.C. simultaneously suspended trading in 34 securities for that reason.[26]

Indeed, in its final April 21, 1976 order continuing its trading suspension, the S.E.C. gave as one of the reasons for the suspension the delinquency of Canadian Javelin

25. See Securities Exchange Act Release No. 10732, 4 SEC Docket 82 (April 11, 1974).

26. See Securities Exchange Act Release No. 12360, 9 SEC Docket 481 (April 22, 1976).

Ltd. "with respect to the filing of its 10-K report" (See Pet. App. 23a). From this it is obvious that the reason that the S.E.C. did not re-suspend trading in Canadian Javelin Ltd. on or about November 8, 1976, the date it filed the complaint alleging a delinquency by Canadian Javelin Ltd. in its 10-K filing, and the reason that trading in Canadian Javelin Ltd. is not suspended at the present time is that if the S.E.C. were to institute a new series of ten-day suspension orders it would demonstrate the invalidity of its mootness argument as well as violate the order of the court of appeals.

As noted previously, on September 26, 1975 the S.E.C argued before the court of appeals that the case was moot even though there was in effect a then current series of consecutive ten-day orders suspending trading in Canadian Javelin Ltd. In the prior petition for review, the S.E.C. "suggested" to the court of appeals that the controversy was moot when the trading suspension lapsed and shortly thereafter the controversy arose again because the S.E.C. instituted a new series of trading suspension orders. The fact that once before the S.E.C. said this case was moot only to have the underlying dispute between the parties arise again demonstrates that under this Court's decision in *Nebraska Press Association v. Stuart, supra,* and other cases this case is not moot.

This case is not moot for yet another reason. As noted previously, trading in Canadian Javelin Ltd. has not been permitted to resume as a result of the S.E.C.'s application of Rule 15c2-11, which places restrictions on the resumption of quotations in a security which has not been quoted for three consecutive business days. One of the principal effects of this rule is that any time trading in a security is suspended for a period of ten days or more, it can no longer be legally quoted by registered broker-dealers until all financial reporting requirements are met to the satisfaction

of the S.E.C. It is sufficiently clear in view of the pendency of the suit in the District Court for the District of Columbia that at no time in the reasonably forseeable future will the financial reports filed by Canadian Javelin Ltd. be satisfactory to the S.E.C. Since the S.E.C., by virtue of its authority to regulate "national quotations mediums" such as the pink sheets published by the National Quotation Bureau Inc., has the procedural mechanism available to prevent any security from being quoted, it is clear that the S.E.C. is in a position to prevent trading in Canadian Javelin Ltd. from ever resuming by virtue of its application of Rule 15c2-11 which only applies to securities which have not been actively quoted for three consecutive days. Since Canadian Javelin Ltd. was actively quoted up until the time of the S.E.C.'s April 29, 1975 trading suspension and since the trading suspension was the only reason that Canadian Javelin Ltd. ceased to be actively quoted, it follows that if a court were to declare all of the 37 trading suspension orders to have been invalid, the S.E.C. would be required to permit quotations and trading in Canadian Javelin Ltd. to resume not withstanding Rule 15c2-11. It is noteworthy that a memorandum dated October 17, 1975, which the S.E.C. included in the record in support of one of its trading suspension orders, states: "The S.E.C. staff also plans to further discuss with the Amex a long-term solution to the continuous CJV problem."

Perhaps at the time of this memorandum the S.E.C. already had in mind the procedure which it now uses to prevent trading in Canadian Javelin Ltd., without the necessity of issuing formal trading suspension orders, through a surprising application of Rule 15c2-11. In any event, it is apparent that there is no merit to the S.E.C.'s argument that the court of appeals should have declared this case to be moot.

II

The other principal point advanced by the S.E.C. has little more to recommend it. This concerns the S.E.C.'s claim that Congress "acquiesced" to the S.E.C.'s assumption of the power to suspend trading for periods of longer than ten days. However, "an agency may not bootstrap itself into an area in which it has no jurisdiction by repeatedly violating its statutory mandate." ***Federal Maritime Commission v. Seatrain Lines, Inc.***, 411 U.S. 726, 745 (1973). "[A]dministrative practice does not avail to overcome a statute so plain in its commands as to leave nothing for construction." ***Norwegian Nitrogen Products Company v. United States***, 288 U.S. 294, 315 (1933). "Administrative construction over a long period of time is an available tool for judicial interpretation only when the statutory terms are doubtful or ambiguous." ***United States v. Southern Ute Indians***, 402 U.S. 159, 173 n. 8 (1971); ***Estate of Stanford v. Commissioner***, 308 U.S. 39, 52 (1939); ***Norwegian Nitrogen Products v. United States, supra.***

In order to create the impression that Congress, by enacting a statute which gives the S.E.C. the authority to suspend trading in a security "for a period not exceeding ten days", actually intended to give the S.E.C. the discretionary authority to suspend trading for an indefinite time period, the petition misrepresents several of the committee reports which it cites. For example, page 9 of the petition cites H.R. Rep. No. 1418, 88th Cong., 2d Sess. 24 (1964). However, the only reference to trading suspensions which can be found there states:

> "Section 6(c) of the bill would further amend section 15(c) of the act by adding a new paragraph (5), which would provide the Commission with authority summarily to suspend over-the-counter

trading in any security (except an exempted security) for a period not exceeding 10 days. Registered brokers and dealers would be prohibited from trading in any such security during the period or periods of suspension, and other brokers and dealers would be prohibited from making use of the mails or of any means or instrumentality of interstate commerce to trade in such security during such period."

There is nothing in this paragraph which supports the view that even the members of Congress who familiarized themselves with this committee report and voted for passage of the 1964 amendment to the Securities Exchange Act, intended to give the S.E.C. the authority to suspend trading in a security for as long as it felt inclined to do so. What the S.E.C. ultimately relies upon is not a statement by any Congressman or House Committee that the S.E.C. should be given this authority but a letter from the S.E.C. itself which was incorporated in the record of the hearings before a House subcommittee and which stated (Hearings on Investor Protection Before the Subcommittee of the House Committee Intrastate and Foreign Commerce, 88th Cong., 1st Sess. 218-219 (1963)):

"2. *Summary suspension of trading in over-the-counter securities.*—

The bill would amend further section 15(c) of the act by adding a new paragraph (5), which would provide the Commission with authority summarily to suspend over-the-counter trading in any security (except an exempted security) for periods of 10 days. Broker-dealers would be prohibited from trading in any such security during the period or periods of suspension. This provision would be a counterpart to section 19(a)(4). The Commission could invoke this suspension power in those cases

in which fraudulent or manipulative practices of the issuer or other persons have deprived the security of a fair and orderly market, or where some corporate event makes informed trading impossible and provides opportunities for the deception of investors. Trading would be resumed as soon as adequate disclosure and dissemination of the facts material to informed investment decision were achieved.

Under section 19(a)(4), the Commission has issued more than one suspension when, upon reexamination at the end of the 10-day period, it has determined that another suspension is necessary. At the same time the Commission has recognized that suspension of trading in a security is a serious step, and therefore has exercised the power with restraint and has proceeded with diligence to develop the necessary facts in order that any suspension can be terminated as soon as possible. The Commission would follow that policy in administering the proposed new section 15(c)(5)."

All that the above paragraph really says is that if Congress gives the S.E.C. the power to suspend trading in over-the-counter securities, the S.E.C. will exercise that power with restraint. This statement must be considered in light of the fact that, by the time of the passage of the 1964 amendment, the suspension power had been exercised on relatively few occasions. From 1934 to 1961, the S.E.C. suspended trading on a total of only 17 occasions. II Loss, *Securities Regulation* 852 (2d ed. 1961). Professor Loss reports that by 1969 "the Commission on more than a hundred occasions has exercised its summary power to suspend trading" including 10 in 1965, 13 in 1966, 28 in 1967, and 29 in the first nine months of 1968. V Loss,

Securities Regulation 2814, 2816 (1969 Supp.). From these figures it appears that the S.E.C. may have exercised the suspension power as few as 21 times during the thirty-year period preceding the 1964 amendment to the Securities Exchange Act, suspending altogether fewer securities than it suspended on a single day a number of times from 1974 to the present.[27]

The S.E.C.'s contention that the above quoted paragraph, cited in the petition, which is but a small part of a lengthy letter drafted by the S.E.C. itself and which was inserted in the record of a voluminous subcommittee hearing, demonstrates that Congress intended to give the S.E.C. unlimited trading suspension power, strains credulity. Similarly, the S.E.C.'s claim that the Senate acceeded to the S.E.C.'s assumption of the power to suspend trading in a security for an indefinite time period is weakened by the fact that the petition quotes a Senate report out of context. The paragraph from which the petition quotes states in full (S. Rep. No. 379, 88th Cong., 1st Sess. 66-67 (1963)):

> "The Commission has consistently construed section 19(a)(4) as permitting it to issue more than one suspension if, upon reexamination at the end of the 10-day period, it determines that another suspension is necessary. The committee accepts this interpretation. At the same time the committee recognizes that suspension of trading in a security is a drastic step and that prolonged suspension of trading may impose considerable

27. On December 13, 1976, the S.E.C. suspended for ten days trading in securities of 25 different railroads, Penn Central Co. and its affiliates. Securities Exchange Act Release No. 13064, 11 S.E.C. Docket 1176 (December 13, 1976). Of these railroad securities, 21 were resuspended for a non-successive ten-day period on May 4, 1977, along with nine others. Securities Exchange Act Release No. 13504, 12 SEC Docket 297 (May 4, 1977).

> hardship on stockholders. The committee therefore expects that the Commission will exercise this power with restraint and will proceed with all diligence to develop the necessary facts in order that any suspension can be terminated as soon as possible."

The above cited paragraphs, taken from Senate and House reports, were also cited in the brief the S.E.C. filed with the court of appeals. The decision of the court of appeals states that it reviewed the legislative history of the Securities Exchange Act as it pertains to the trading suspension power and concluded that "no express statutory authority . . . was ever enacted" for the S.E.C.'s assumption of the power to suspend trading in a security for a period exceeding ten days (Pet. App. 12a). This conclusion is correct and does not warrant Supreme Court review, particularly since the court of appeals adopted in part (Pet. App. 12a) the words of a former Chairman of the S.E.C. Professor Loss, quoting the Chairman of the S.E.C., states (II Loss, *Securities Regulation, supra* 854-855 (2d ed. 1961)):

> " 'Lately, this grant of power [§19(a)(4)] has been used to keep in effect a suspension of trading pending final delisting proceedings,' although 'No express authority for such action is contained in Section 19(a)(4).' In at least one of the most recent of the seven cases in which suspension orders accompanied the institution of delisting proceedings, the suspension order is quite bare of any emergency findings."

The S.E.C. does not and cannot claim that in 1934, when Congress originally gave the S.E.C. the power to suspend trading in a security for a period "not exceeding ten days," it intended to authorize the S.E.C. to continue a trading suspension for a more lengthy time period. There is

little legislative history on this provision of the 1934 Act because it was not included in the earlier drafts of the bill. However, it is plainly apparent that when Congress in unambiguous terms gave the S.E.C. the power to suspend trading in a security "for a period not exceeding 10 days," it meant exactly that. Moreover, the petition is silent with regard to the legislative history of the 1975 amendments to the Securities Exchange Act and says nothing about Senate Report No. 94-75 which criticized the S.E.C.'s exercise of its then existing trading suspension power. The court of appeals relied upon this report in reaching its conclusion that Congress did not and does not intend to give the S.E.C. the authority to suspend in a security for a period exceeding 10 days (See Pet. App. 13a). Indeed, it is clear that if the S.E.C. believed that Congress desires that it have the authority to suspend trading in a security for a period exceeding 10 days, it would no doubt have already asked Congress to enact appropriate amendments to the statute during the ten months which have passed since the decision of the court of appeals.

The petition also contends that the court of appeals should have deferred to the S.E.C.'s construction of the Securities Exchange Act. However, the "administrative deference rule" which forms the underpinnings of the S.E.C.'s argument does not require a court to defer to an administrative agency's expansive view of its own jurisdiction. Otherwise, the courts would be virtually powerless to curb the usurpation of authority by an agency such as the S.E.C. The S.E.C. is known to almost invariably adopt the broadest possible view of the scope of federal securities laws and its own jurisdiction and this Court has rather consistently found the views of the S.E.C. to be disentitled to deference particularly in areas such as this one which have been generally reserved for judicial resolution. See *Piper v. Chris-Craft Industries, Inc.*, 430

U.S. 1, 41 n. 27 (1977); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976); *Foremost-McKesson v. Provident Securities*, 423 U.S. 232, 259-260 (1976). Moreover, the fact emphasized in the petition that for 32 years prior to the decision of the court of appeals the S.E.C. has engaged in the practice of suspending trading in securities for periods exceeding ten days does not benefit the S.E.C. because "Congressional inaction frequently betokens unawareness, preoccupation, or paralysis." *Zuber v. Allen*, 396 U.S. 168, 185-186, n. 21, 24 (1969).

The cases cited by the S.E.C. are not helpful to its position. Both *Red Lion Broadcasting Co. v. F.C.C.*, 395 U.S. 367, 381 (1969) and *Udall v. Tallman*, 380 U.S. 1, 16-17 (1965) involved situations where this Court held that an agency's interpretation *of its own regulations* was entitled to judicial deference. In the latter case, this Court emphasized that there was "no statutory limitation involved." *Id.* at 17. In the instant case, the statute involved expressly imposes a limitation by giving the S.E.C. the authority to suspend trading "for a period not exceeding ten days." The above cited cases do not stand for the proposition that the S.E.C. can override that limitation on its authority simply by ignoring it. In addition, the petition cites three cases which it claims show that "where Congress has reenacted or amended a statute without disapproving the agency's construction, Congress may appropriately be considered to have approved that construction as correct" (Pet. 9-10). However, the cases cited involve quite different situations. Moreover, the decision of the court of appeals states that it reviewed the legislative history of the 1975 amendments to the Securities Exchange Act and concluded that Congress had in fact expressed disapproval of the S.E.C.'s proclivity for suspending trading for periods longer than ten days and accordingly had enacted §12(j) and §12(k) of the Securities Exchange Act, which contain language different from that found in the predecessor statute (Pet. App. 13a-15a). The

Petition does not address this point. Instead, it devotes its discussion to the legislative history of the 1964 amendment to the Securities Exchange Act (Pet. 8-9), which was repealed in 1975.

III

For the foregoing reasons, it can be seen that the arguments presented in the petition are meritless. It does not follow, however, that the petition should be denied. The situation presented here can be analogized to cases in which this Court has allowed direct appeals from decisions of three-judge district courts convened under 28 U.S.C. §2282 (now repealed) granting injunctions against federal officials or to cases in which this Court has entertained appeals under 28 U.S.C. §1254(2) from decisions by a court of appeals invalidating a law of the United States. Of course, here S.E.C. has no right of appeal because the court of appeals did not invalidate a law of the United States and this case was not one tried by a three-judge district court. However, the court of appeals did invalidate the S.E.C.'s interpretation of a law of the United States, thereby limiting the S.E.C.'s authority to act, and it enjoined the S.E.C. by ordering it "to discontinue forthwith its adoption and use of successive ten-day suspension orders" (Pet. App. 17a). The rationale behind the statutory authorization for direct appeals in certain cases and behind the reasons this Court should dispose on the merits of the contentions presented by the S.E.C., as frivolous as they may be, is illustrated by the point made on page 31 of Respondent's petition for a writ of certiorari from the same decision of the court of appeals (See *Sloan v. S.E.C.*, No. 76-1547):

> "[I]t should be pointed out that if this Court decides not to review the decision of the court of appeals, the validity of S.E.C. procedures with respect to its trading suspension policies will, for practical purposes, have been finally and forever judicially decided without the possibility of further review in this or any other Court. This circumstances alone should be sufficient to require review of the decision of the court of appeals."

The S.E.C. does not seem to agree with this view. It does not agree that it has been enjoined and that it may never again issue successive ten-day trading suspension orders. It claims that the decision of the court of appeals has merely "cast a substantial shadow over the Commission's right to exercise its suspension powers" (Pet. 12, n. 8). Perhaps the S.E.C. is hedging in the hopes of preventing the Commissioners from having to go directly to jail if they revert to the practice of issuing successive ten-day suspension orders, failing reversal of the decision of the court of appeals. In any event, it is submitted that the petition for a writ of certiorari should not be denied although summary affirmance of the decision of the court of appeals to the extent that it invalidated the issuance of successive ten-day suspension orders may be appropriate.

As noted previously, Respondent has filed his own petition for a writ of certiorari seeking to review the same decision of the court of appeals. Among the questions presented in that petition are two which concern that part of the decision of the court of appeals which upheld the validity of the first of the 37 trading suspension orders. Parallel questions are presented as questions 3 and 4 of the instant response and it is submitted that they are so intertwined with the questions presented in the petition by the S.E.C. that they should all be resolved, if this Court grants certiorari. Question 3 concerns the substantiality of the evidence. The court of appeals had before it a record consisting primarily of expurgated memoranda and

summary trading suspension orders. Three of these memoranda are included as appendices to this petition. Although the record was brief it was sufficient to demonstrate that some of the claims which were presented to the court of appeals and which are presented again to this Court are fictitious. For example, the petition makes the self-serving statements that "the Commission made a series of separate determinations suspending trading" and "the Commission investigation . . . resulted in the filing of the Civil Action, *Securities & Exchange Commission v. Doyle, et al.*, Civ. Action No. 76-1882 (S.D.N.Y.)" (Pet. 3-4). The record casts considerable doubt on the accuracy of these statements. For one thing, there is no indication that the Commissioners themselves took any part in any of the decisions to issue the summary suspension orders. The first order is dated April 29, 1975 and is signed by the secretary of the S.E.C., George A. Fitzsimmons.[28] However, the "informational memorandum" which is included in the record to demonstrate the justification for the trading suspension is dated May 2, 1975, three days later, and is addressed to the "the Commission" and from the "Division of Enforcement". This memorandum is included as Appendix L in the Petition in No. 76-1547. It bears the names of three members of the S.E.C. staff. It is clear from this that it was the S.E.C. staff that decided to order the suspension of trading in Canadian Javelin Ltd. and it was not until three days later that they got around to sending a memorandum to the S.E.C. informing the Commissioners of the reasons for which they took this action. There is no

28. The signatures of George A. Fitzsimmons on this and subsequent orders of the S.E.C. suspending trading are identical to each other in every respect. From an examination of these signatures it is clear that they were produced by a rubber stamp or a mechanical signature writing machine rather than manually. In the first petition for review of orders suspending trading in Canadian Javelin Ltd., Respondent complained that several of the orders were not signed at all. Apparently, the S.E.C. has corrected this situation by mechanical means.

provision of the Securities Exchange Act or of the rules and regulations of the S.E.C. which permits this delegation of authority by the S.E.C. to its staff. The second trading suspension order is dated May 8, 1975 and announces a suspension of trading from May 9, 1975 through May 18, 1975. The record of this trading suspension consists of the May 2, 1975 memorandum plus a memorandum dated May 6, 1975 which states that the staff of the S.E.C. met with counsel for Canadian Javelin Ltd. and had requested that Canadian Javelin Ltd. issue "a press release relating to the trading suspension" but that company counsel had indicated that it would require additional time "in order to obtain approval for their press release." The record for the third trading suspension consists of the May 2, 1975 memorandum and a memorandum dated May 12, 1975 which is identical in all respects to the May 6, 1975 memorandum, except the date. The record of the fourth trading suspension consists of a memorandum dated May 23, 1975 which discusses an investigation by the Royal Canadian Mounted Police and states that "company counsel previously indicated that they intend to submit an appropriate release but have not yet done so." The record of the following three trading suspensions consists solely of memoranda dated May 30, 1975, June 16, 1975, and June 24, 1975 respectively, which are identical to the May 23, 1975 memorandum, the only difference being the date.

This pattern continued throughout the record of the 37 successive trading suspension orders. Each trading suspension order is supported by a memorandum which is usually identical to the memorandum supporting the previous trading suspension order but which is sometimes modified to include updated material. Even the updated material indicates that little active work was being done by the S.E.C staff in pursuing the matters which brought about the trading suspension. There is, for example, in several memoranda a discussion of corporate developments

concerning a dispute over control of Canadian Javelin Ltd. which developed in early 1976 and which resulted in litigation in Quebec Superior Court. This dispute had nothing to do with any investigation being conducted by the S.E.C. staff although it appears more than likely that this dispute was fostered by stockholder dissatisfaction with management resulting from the S.E.C.'s trading suspension.

On the basis of the record, the court of appeals was in a good position to reject the assertion of the S.E.C. that each trading suspension order was issued "on the basis of an independent determination made at the time that continued suspension was required in the public interest and for the protection of investors" (Pet. App. 11a-12a). None of the memoranda even so much as state that the public interest or the protection of investors would be served by a trading suspension. Rather, the memoranda indicate that the trading suspension was being used as a negotiating point in discussions between the S.E.C. staff and counsel for Canadian Javelin Ltd. In other words, the S.E.C. staff was offering to lift the trading suspension if management of Canadian Javelin Ltd. would cooperate with the S.E.C. in various ways. Since none of the officers of Canadian Javelin Ltd. were residents of the United States, the S.E.C. did not have available subpoena power or other means to coerce testimony or the production of documents. Consequently, the S.E.C. attempted to use its trading suspension power to obtain leverage to secure the "cooperation" of officers Canadian Javelin Ltd. The initial memoranda indicate that the S.E.C. expressed a willingness to lift the suspension of trading in Canadian Javelin Ltd. if the company would issue "an appropriate press release." Subsequent memoranda state that the S.E.C. staff was requesting the cooperation of officers of Canadian Javelin Ltd. including John C. Doyle, its principal stockholder, and his son, who was also an officer of Canadian Javelin Ltd., and was

asking them to agree to meet with and give sworn testimony before members of the S.E.C. staff and to agree to waive their Fifth Amendment rights and their rights to attorney client privilege.[29] The latter request appears to relate to an S.E.C. rule, since declared unconstitutional in *S.E.C. v. Csapo*, 533 F. 2d 7 (D.C. Cir. 1976), which authorized the S.E.C. under certain circumstances to prohibit a person testifying before it pursuant to an order of investigation from appearing with counsel of his choice. Most of the memoranda issued during mid-1975 contain discussions of efforts by the S.E.C. staff to get officers of Canadian Javelin Ltd. to cooperate along the lines of waiving various privileges. Although these memoranda are generally optimistic, it turned out that the efforts of the S.E.C. to obtain cooperation failed. An S.E.C. staff memorandum in the record dated October 1, 1975, which is included as Appendix C to this petition, states that the board of Canadian Javelin Ltd. met in Costa Rica on September 28 and 29, 1975 and refused to waive any attorney-client privilege and that neither the president of Canadian Javelin Ltd. nor Doyle nor his son intended to meet with the S.E.C. staff. Subsequent memoranda indicate that thereafter the S.E.C.'s investigation ground to a halt.

Page 4 of the petition states that the S.E.C.'s investigation resulted in the filing of a suit entitled *S.E.C. v. Doyle*, Dkt. No. 76-1882 (S.D.N.Y.). That statement is

29. In 1974 in Newfoundland, Doyle testified voluntarily before members of the S.E.C. staff. Pursuant to the Freedom of Information Act, Respondent has obtained from the S.E.C. a transcript of this testimony and it shows that after identifying himself, Doyle asserted the Fifth Amendment privilege to every question asked. Papers filed in Doyle's behalf on August 24, 1977 in the Southern District of New York in *S.E.C. v. Doyle*, 76 Civil 1882 (WCC), state that Doyle is still amenable to testifying before the S.E.C., as long as the testimony is taken in Panama. (He is now a fugitive from justice in both the United States and Canada). However, he apparently intends again to assert the Fifth Amendment privilege.

false. On March 8, 1976, a criminal information was released in Canada containing 406 charges of wash-trading in the shares of Canadian Javelin Ltd. by five individuals including John C. Doyle. The civil suit cited by the S.E.C. was filed on April 26, 1976 and the defendants were the five individuals named in the criminal information plus four corporations which they allegedly controlled. The allegations in the S.E.C.'s complaint closely paralleled the wash-trading charges in the criminal information.[30] Canadian Javelin Ltd. was not named as a defendant in the S.E.C.'s civil suit and there is no indication in the informational memoranda supplied by the S.E.C. or elsewhere that the allegations in the complaint were based on anything other than the charges contained in the criminal information released in Canada. It is true that several of the memoranda in the record state that the filing of the suit would be closely timed with the lifting of the trading suspension. However, none of the memoranda state that the suit was based upon information uncovered by the S.E.C. during the course of its investigation. For that matter, the term "wash-trading" is not to be found in any of the memoranda supporting the trading suspensions nor is it discussed in any of the 10,000 pages of material Respondent has obtained from the S.E.C. pursuant to the Freedom of Information Act. Indeed, no specific illegal conduct on the part of Canadian Javelin Ltd. or anyone else is set forth in any of the memoranda dated prior to the release on March 8, 1976 of the criminal information beyond use of the words "manipulation" and "manipulative activities." Moreover, upon filing suit the S.E.C. promptly lost interest in the case. The S.E.C. made no attempt to effectuate service of the summons and complaint upon the defendants and the case lay dormant until one year later when the S.E.C. filed a motion for

30. The complaint is described in Litigation Release No. 7371, 9 SEC Docket 535 (April 26, 1976).

extra-territorial service of process returnable April 8, 1977, just two weeks prior to the date the instant petition for writ of certiorari was originally due. It is apparent from the timing of this motion that the belated attempt by the S.E.C. to prosecute that case stems primarily from the desire of the S.E.C. to buttress its position with respect to the instant petition and to answer the point made by Respondent to the court of appeals concerning the lack of prosecution of the S.E.C.'s suit against Doyle.

The record of this case, consisting as it does of expurgated memoranda of the type included in Appendix A, B and C herein as well as Appendix L of the petition in No. 76-1547, does not come close to meeting the substantial evidence test. This in itself should form sufficient basis for vacating the trading suspension orders of the S.E.C., as the court of appeals indicated in its earlier opinion, *Sloan v. S.E.C.*, 527 F. 2d 11, 12 (2d Cir. 1975). Moreover, the memoranda demonstrate that it was lack of cooperation by Canadian Javelin Ltd. and its officers, not illegal conduct, which led the S.E.C. to continue its trading suspension for more than a year. This was clearly improper particularly since it was not the stockholders who were uncooperative, yet it was they who suffered from the trading suspension.[31] Further, even assuming there were acts by Canadian Javelin Ltd. and its officers which might be deemed to

31. The financial loss suffered by Respondent as a direct result of the trading suspension and the hostility of the S.E.C. to Respondent's interests is illustrated by a no-action letter the S.E.C. gave to a legal adversary of Respondent permitting the sale during the period of the trading suspension of 1,000 shares of Canadian Javelin Ltd. belonging to Respondent and obtained pursuant to an order of attachment, at a public auction, at a severely depressed price. See "Canadian Javelin Ltd." S.E.C. Division of Market Regulation (*December 16, 1975*) CCH Fed. Sec. Law Rep. ¶80,417 [1975-76 Transfer Binder] At the same time, the Freedom of Information Act material obtained from the S.E.C. shows that it denied a request for a no-action letter by Interstate Securities, Inc., a brokerage firm in Charlotte, N.C., which sought permission to sell suspended Canadian Javelin Ltd. shares on the Montreal Stock Exchange.

violate federal securities laws, these acts occurred outside of the United States and hence were not illegal since under the principles set forth in Section 18 of the Restatement (Second) of the Foreign Relations Laws of the United States (1965) (cf. *Racaman v. Barish*, 408 F. Supp. 1189, 1195 n. 3 (E.D. Pa. 1975)) the federal securities laws do not have extra-territorial application inasmuch as they embody concepts unknown to the laws of all other nations (except in some cases Canda) with "reasonably developed legal systems."

IV

In holding that by issuing a series of successive trading suspension orders the S.E.C. violated statutory provisions, the court of appeals stated (Pet. App. 14a-15a):

> "It is not necessary to deal with this point as a constitutional violation, because the procedures adopted by the S.E.C. plainly transgressed the statutory provisions."

Thus, if this Court agrees with the arguments presented by the S.E.C. regarding legislative intent, it must reach the question of whether the successive ten-day trading suspension orders violate the constitution. That question has been presented in the instant response as well as in the cross-petition in No. 76-1547.

It is submitted that the trading suspension which is the subject of the instant petition, lasting as it did from April 29, 1975 until May 2, 1976, during which time neither Respondent nor anyone else was accorded notice or the opportunity for a hearing,[32] plainly transgressed the

32. The Freedom of Information Act material obtained by Respondent contains more than a hundred letters from stockholders of Canadian Javelin Ltd. as well as members of Congress and others protesting one or more of the trading suspensions. Many of these letters were from attorneys who demanded hearings. None of these requests for a hearing were granted.

Constitution. The S.E.C. points to a procedure announced on April 22, 1976 under which a person adversely affected may petition the S.E.C. not to renew the suspension (Pet. 11, n. 6; Pet. App. 24a-26a). However, the promulgation of that procedure merely gives lip service to the constitutional right to a hearing, as the S.E.C.'s first and, to date, only exercise of the procedure demonstrates (See Pet. App. 21a-23a). The procedure requires the petitioner to "set forth with particularity facts upon which petitioner relies" (Pet. App. 25a). However, since the S.E.C. usually does not reveal the reasons for its continued trading suspension, the procedure shifts the burden of proof to the petitioner, who must try to disprove the facts upon which the trading suspension is based without knowing what those facts are. In the instant case, as in most cases, the S.E.C. did not reveal the reasons for its year-long trading suspension until it issued Securities Exchange Act Release No. 12394, 9 S.E.C. Docket 509 (April 29, 1976), in which it announced that the trading suspension would be terminated. The only clue provided by the S.E.C. prior to that time as to the reasons for the trading suspension was a single sentence in the release announcing the initial suspension which stated that the suspension was ordered "pending dissemination of information concerning regulatory action by Canadian authorities."[33] A copy of that release is included as Appendix D to this petition. In addition, the procedure states that it may not be utilized by anyone who "shall fail to cooperate" with the Commission (Pet. App. 25a). In the instant case, the very reason for the trading suspension was a determination by the S.E.C. staff that there had been a failure to cooperate. Thus, the promulgation of the cited procedure does not modify a situation rife with potential for abuse of constitutional rights. See *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959).

33. Canadian Javelin Ltd. stated in its annual report to stockholders that it did not know the reason for the trading suspension.

It is submitted that the underlying statute, namely §12(k) of the Securities Exchange Act, 15 U.S.C. §78l(k), is unconstitutional for at least three reasons. First, the statute does not set forth standards to be observed by the S.E.C. in its determination of when "the public interest and the protection of investors so require" a trading suspension. Due to this absence of standards, the statute authorizing the S.E.C. summarily to suspend trading in a security is an unconstitutional delegation of legislative authority to an administrative agency.[34] See *National Cable Television v. United States*, 415 U.S. 336, 342 (1974). Second, a trading suspension does not serve sufficiently important governmental interests as to justify the severe deprivation of property interests which it entails prior to notice and the opportunity for a hearing. *Fuentes v. Shevin*, 407 U.S. 67, 90-93 (1972); *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974). Even a ten-day suspension from high school without notice or a hearing is unconstitutional. *Goss v. Lopez*, 419 U.S. 565, 579-584 (1975). Third, a trading suspension by the S.E.C. prohibits purchases and sales of securities which are purely intrastate in character. Regulation of intrastate securities transactions is beyond the reach of the commerce clause of the Constitution. Therefore, the attempt through the exercise of §12(k) of the Securities Exchange Act to prohibit intrastate trading in a security such as Canadian Javelin Ltd. is unconstitutional.

34. It should be noted that the decision as to whether a foreign corporation should be prohibited from having its shares sold in the United States involves foreign policy considerations which are within the exclusive province of the President and Congress. Cf. *Chicago & Southern Air Lines, inc. v. Waterman Steamship Corp.*, 333 U.S. 103, 109-110 (1948).

CONCLUSION

For all of the reasons set forth above, the petition for a writ of certiorari should be granted and this Court should affirm the order of the court of appeals to the extent that it vacated a total of thirty-six consecutive ten-day suspension orders.

Respectfully submitted,

SAMUEL H. SLOAN
1761 Eastburn Avenue, Apt. A5
Bronx, New York 10457
(212) 864-5770 or 299-2095

Dated: New York, New York
September 20, 1977

APPENDIX A—MEMORANDUM DATED JULY 1, 1975 FROM THE DIVISION OF ENFORCEMENT TO THE COMMISSION

MEMORANDUM

File No.: HO-815
Date: July 1, 1975

TO: The Commission

FROM: The Division of Enforcement

RE:
DATE FILED:
AMENDED:
SUBJECT: Canadian Javelin Limited
RECOMMENDATION: [redacted]

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None

This suspension began on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX")

Since continuance of the Commission's last 10 day trading suspension, members of the staff have taken testimony in this matter in Montreal, and St. John's, Newfoundland, and information is being exchanged with the RCMP. Much of the Canadian information was ob-

tained by the RCMP [redacted] in Canada in 1975 which is the time period the staff's investigation is focusing on. The information gathered thus far, including testimony and documentary evidence, shows that brokers in Canada and the United States, assisted directly or were in some way involved since January 1975 in an attempt to manipulate Canadian Javelin's stock.

The staff met with representatives of the AMEX on June 27, 1975 which is conducting its own inquiry and we are further advised that they will continue their trading suspension until the Commission is in a position to reveal the extent of the manipulation and its participants. Canadian Javelin is deemed by the AMEX to be a chronic violator and thought is being given to a possible delisting of the security.

A meeting was held on June 26, 1975 with special counsel to the company who was requested to investigate several transactions involving the company during the height of the alleged manipulation. In addition, company counsel has promised the staff that a meeting will be arranged with John C. Doyle during the month of July. Mr. Doyle, a fugitive from justice stemming from a securities conviction in 1965, is the largest single shareholder and has controlled the direction of Canadian Javelin since its inception. The staff has traced Mr. Doyle's telephone in Nassau to have been frequently called by certain persons believed to have been directly involved with wash trading during the relevant period. Furthermore, company counsel has not yet submitted an appropriate press release as was recently promised. The staff hopes to conclude the investigation shortly after it meets with Mr. Doyle.

[redacted]

Prepared by:

DPDoherty, Assistant Director (51246)
RGRyan, Branch Chief (51569)
H. Ammerman, Attorney (51476)

APPENDIX B—MEMORANDUM DATED APRIL 9, 1976 FROM THE OFFICE OF GENERAL COUNSEL TO THE COMMISSION

MEMORANDUM

April 9, 1976

TO: The Commission
FROM: Office of the General Counsel
RE: The "petition" of Samuel H. Sloan that the Commission "review all orders of the suspension of trading in Canadian Javelin, Ltd. from November 29, 1973 to and including such date as this petition may be decided." Mr. Sloan demands that the Commission declare all of the previous Canadian Javelin trading suspensions illegal and that the Commission issue an order declaring that there will be no further suspensions of trading in Canadian Javelin Ltd.

RECOMMENDATION: [redacted]

OTHER OFFICES AND DIVISIONS
CONSULTED: Division of Enforcement.

NOVEL, UNIQUE OR COMPLEX ISSUES
INVOLVED: This will be the initial use of the procedure

recently adopted by the Commission for handling objections to summary trading suspensions.

Background

As the Commission will recall the United States Court of Appeals for the Second Circuit, in October, 1975, rejected Mr. Sloan's attack on summary trading suspensions based upon the Commission's representation that we would give a person who claimed to be aggrieved by such a suspension an opportunity to be heard (*Sloan v. Securities and Exchange Commission*, C.A. 2, No. 74-2457). The Court indicated at that time that such a hearing should result in a record which could later be reviewed on appeal if that became necessary. As a result of that decision the Commission recently indicated that it would issue a release announcing the adoption of a procedure whereby a person claiming to be adversely affected by a suspension could petition the Commission not to renew such a suspension.[1] The release is to state that such petitions "may not be in the form of a letter or other statement, should set forth with particularity the facts upon which petitioner relies and should be sworn to by the petitioner or an authorized officer of the petitioner."

Facts

On or about March 15, 1976, Mr. Sloan served the Commission with a document entitled "VERIFIED PETITION FOR REVIEW"[2] (a copy of which is attached) and an affidavit in support thereof. In his "petition" Mr.

1. See Attachment A to memorandum of this Office and the Division of Enforcement, dated March 11, 1976, a copy of which Attachment is appended hereto.

2. This petition was filed in accordance with a staff instruction to Mr. Sloan, since he had previously attempted to obtain review by filing a copy of voluminous briefs and unsworn allegations he had filed in various court proceedings.

Sloan asks the Commission to review all of the suspensions of trading in Canadian Javelin, Ltd. securities from November 29, 1973, up to and including the date this petition may be decided. He further demands a hearing and a declaration that all suspensions of trading in Canadian Javelin have been illegal. He finally demands that the Commission issue an order declaring that there will be no further suspensions of trading in Canadian Javelin. In the affidavit attached to the petition Mr. Sloan alleges, among other things, that Section 12(k) only permits the Commission to suspend trading for a ten-day period and that the renewal of suspensions violates that statutory provision. Mr. Sloan then purports to make an analysis of the market conditions in the stock of Canadian Javelin at the times the Commission instituted various trading suspensions and concludes that the suspensions were in aid of a market manipulation. Mr. Sloan states that the only conclusion that he can reach is that "Mr. Doyle is bribing a person or persons at the S.E.C. . . ."

[redacted]

[redacted]

DFerber-51170
MJStewart-51224
FBWade-51286

ATTACHMENTS:

1) Draft notice of suspension of trading and denial of petition for review.

2) Draft letter to Mr. Sloan.

3) Attachment A memorandum dated March 11, 1976.

4) Verified Petition for Review.

5) Mr. Sloan's affidavit in support of his petition.

APPENDIX C—MEMORANDUM DATED OCTOBER 1, 1975 FROM THE DIVISION OF ENFORCEMENT TO THE COMMISSION

MEMORANDUM

FILE NO.: HO-815
DATE October 1, 1975

TO: The Commission
FROM: Division of Enforcement
RE: Canadian Javelin Limited ("CJV")
DATE FILED:
AMENDED:
SUBJECT:
RECOMMENDATION: [redacted]

ACTION REQUESTED BY:
NOVEL, UNIQUE OR COMPLEX ISSUES: None

The securities of CJV were initially suspended on April 29, 1975 in response to a public announcement by the Royal Canadian Mounted Police ("RCMP") that it was investigating an alleged manipulation of Canadian Javelin's common stock on Canadian stock exchanges and the American Stock Exchange ("AMEX").

The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the Commission's tradiiiing suspension on April 29, 1975 CJV's stock has been continually manipulated on the AMEX as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the

executive committee and currently a director has been behind the manipulation.

The staff has requested a meeting with the president of CJV, Doyle, director of CJV, Doyle's son, a vice president of CJV, Canadian counsel for CJV and the partner in charge of CJV's independent auditor.

Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for the president of CJV and its counsel to testify before the Commission and to furnish information concerning certain sensitive areas involving corporate activities. He also recently advised that on September 28 and 29, 1975 the board met in Costa Rica and authorized CJV counsel to furnish information to the staff; however, the board refused to waive any attorney-client privilege. With respect to our meeting with the President of CJV and the Doyles, counsel advised the staff that neither the president nor the Doyles intend to meet with the Commission's staff. The staff intends to pursue every available recourse to compel the testimony of these witnesses. We have also been advised that a Panamanian attorney, under CJV direction, has prepared a report of investigation concerning the manipulation which will be forwarded to the staff.

[redacted]

RJRyan (51469)
LLevine (51468)
HAmmerman (51476)

APPENDIX D—SECURITIES EXCHANGE ACT RELEASE NO. 11383 (APRIL 29, 1975)

SECURITIES EXCHANGE ACT OF 1934
Release No. 11383/April 29, 1975

The Securities and Exchange Commission announced the suspension of trading in all securities of Canadian Javelin Limited pursuant to Sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934 for the ten-day period commencing at 3:45 p.m. (EDT), April 29, 1975 and continuing through midnight (EDT), May 8, 1975.

The Commission instituted the suspension pending dissemination of information concerning regulatory action by Canadian authorities.

The Commission cautions broker-dealers, shareholders and prospective purchasers that they should consider carefully the foregoing information along with all other currently available information and any information subsequently issued by the company.

Furthermore, brokers and dealers should be alert to the fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the suspension, no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the Securities and Exchange Commission, Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action.

Supreme Court, U. S.
FILED
OCT 12 1977
MICHAEL RODAK, JR., CLERK

No. 76-1607

In the Supreme Court of the United States

OCTOBER TERM, 1977

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

SAMUEL H. SLOAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONER

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

HARVEY L. PITT,
General Counsel,
Securities and Exchange Commission,
Washington, D.C. 20549.

In the Supreme Court of the United States

OCTOBER TERM, 1977

No. 76-1607

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

SAMUEL H. SLOAN

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY MEMORANDUM FOR THE PETITIONER

Respondent contends (Br. 30-31) that the judgment of the court of appeals in this case has the effect of permanently enjoining the Securities and Exchange Commission from issuing consecutive 10-day suspension orders under Section 12(k) of the Securities Exchange Act of 1934, as added, Pub. L. 94-29, 89 Stat. 118, 15 U.S.C. (Supp. V) 78*l*(k), with respect to the securities of any issuer. The Commission agrees that unless the judgment is vacated, modified, or reversed by this Court, the Commission will be required to abandon an interpretation and application of the statute that it has consistently followed for more than 30 years.

This case arose on petition for review of a series of 10-day suspension orders issued by the Commission (Pet. App. B, p. 8a). On petition for review of an order of the Commission, the reviewing court's jurisdiction is limited

to the power "to affirm or modify and enforce or to set aside the order * * *." Section 25(a)(3) of the Act, 48 Stat. 902, as amended, 15 U.S.C. (Supp. V) 78y(a)(3). The court of appeals, however, did not limit its relief to the orders before it. Instead, the court in its opinion "directed [the Commission] to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading in a security for an extended period, i.e., in excess of ten days" and concluded "[i]t is so ordered" (Pet. App. B, p. 17a). The court's judgment granted the petition for review "in accordance with the opinion of this court" (Pet. App. A, p. 2a).

Accordingly, although there can be no doubt that the court of appeals lacked jurisdiction to enjoin the Commission from issuing consecutive 10-day suspension orders in the future, it is equally plain that the court intended its judgment to have injunctive effect.[1] The Commission has determined that it must abide by that judgment unless this Court grants relief.[2]

Thus the decision below, unless reviewed, will preclude the Commission ever again from exercising an important tool for protecting investors against suspected fraud. As is indicated in the petition (Pet. 9), the Commission's power to issue consecutive 10-day suspension orders has been

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[1]The judgment could not have been intended merely to set aside particular suspension orders, for the series of such orders that respondent challenged had terminated even before oral argument was heard (see Pet. 11).

[2]If the court of appeals' judgment were modified only to eliminate its injunctive effect, however, the court's decision still would stand as a practical barrier to the issuance of consecutive 10-day suspension orders. In almost any corporation whose shares are publicly traded there will be shareholders residing in the Second Circuit who would be able to petition that court for review of a suspension order.

exercised with respect to an average of 20 securities each year for the past 12 years, thus protecting from market manipulation investors who otherwise might have traded in those securities. Such protection is lost for the future under the decision of the court of appeals.

For the reasons stated here and in the petition, this Court should grant the Commission's petition for a writ of certiorari.

Respectfully submitted.

WADE H. MCCREE, JR.,
Solicitor General.

HARVEY L. PITT,
General Counsel,
Securities and Exchange Commission.

OCTOBER 1977.

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Supreme Court, U.S.
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No. 76-1607

In the Supreme Court of the United States

OCTOBER TERM, 1977

SECURITIES AND EXCHANGE COMMISSION, PETITIONER

v.

SAMUEL H. SLOAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION

OPINION BELOW

The opinion of the court of appeals (Pet. App. B, pp. 3a–17a), as modified (Pet. App. C, pp. 18a–20a), is reported at 547 F. 2d 152.

JURISDICTION

The judgment of the court of appeals was entered on November 18, 1976 (Pet. App. A, p. 1a). A timely petition for rehearing was denied on December 27, 1976 (Pet. App. C, p. 18a), and a contemporaneous suggestion for rehearing *en banc* was rejected on January 24, 1977 (Pet. App. F, p. 27a). On March 17,

1977, Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to and including April 25, 1977, and on April 22, 1977, he granted a further extension to and including May 15, 1977. The petition was filed on Monday, May 16, 1977, and was granted on October 17, 1977. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTES INVOLVED

Sections 12(j) and 12(k) of the Securities Exchange Act of 1934, as added by Pub. L. 94–29, 89 Stat. 118, 15 U.S.C. (Supp. V) 78*l*(j) and 78*l*(k), former Section 15(c)(5) of the Act, as added, 78 Stat. 574, 15 U.S.C. (1970 ed.) 78*o*(c)(5), and former Section 19(a)(4) of the Act, 48 Stat. 898, 15 U.S.C. (1970 ed.) 78s(a)(4), are set forth in the Appendix, *infra*. pp. 1A to 3A.

QUESTIONS PRESENTED

1. Whether this case is moot.

2. Whether the Commission's authority under Section 12(k) of the Securities Exchange Act of 1934 summarily to suspend trading in a security "for a period not exceeding ten days" may be exercised at the expiration of an earlier ten-day suspension ordered pursuant to the same statute.

STATEMENT

1. Section 12(k) of the Securities Exchange Act of 1934, as added by Pub. L. 94–29, 89 Stat. 118, 15 U.S.C. (Supp. V) 78*l*(k), provides:

> If in its opinion the public interest and the protection of investors so require, the [Securities and Exchange] Commission is authorized summarily to suspend trading in any security * * * for a period not exceeding ten days * * *. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

Section 12(k) was enacted in 1975, to consolidate in a single provision the authority of the Commission under former Sections 15(c)(5) and 19(a)(4) of the Act, 78 Stat. 574 and 48 Stat. 898, 15 U.S.C. (1970 ed.) 78*o*(c)(5) and 78*s*(a)(4), which empowered the Commission to issue ten-day suspension orders respecting securities traded in the over-the-counter market and on exchanges.

2. On April 29, 1975, the Commission issued an order, pursuant to former Sections 15(c)(5) and 19(a)(4) of the Act, suspending public trading in the common stock of Canadian Javelin, Ltd. ("CJL") for ten days, because the Royal Canadian Mounted Police had commenced an extensive investigation into alleged manipulation of CJL common stock on the American Stock Exchange and several Canadian stock exchanges (App. 11, 12). The Commission determined that the suspension of trading was required in the public interest and for the protection of investors "pending an announcement by Canadian Javelin concerning the investigation by Canadian authorities" (App. 12). At the same time, the Commission, acting under Section 21(a) of the Act, commenced its own investiga-

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tion into allegations of manipulative activities by CJL insiders.

When the Commission's first order suspending trading expired, the Commission issued a second order suspending trading in CJL common stock for a further ten days. In all, a total of 37 separate, successive orders were issued, resulting in a continuous suspension of trading in CJL common stock from April 29, 1975, until May 2, 1976 (Pet. App. B, pp. 8a, 12a). Each order was preceded by a Commission determination that further suspension of trading was required in the public interest and for the protection of investors (App. 11–112).

On the basis of information the Commission obtained during its investigation of CJL, on April 26, 1976 the Commission filed a civil action in the United States District Court for the Southern District of New York. *Securities and Exchange Commission* v. *Doyle, et al.*, Civ. Action No. 76–1882 (S.D.N.Y.). The complaint alleged that the defendants had engaged in a scheme to manipulate the trading of CJL common stock on the American Stock Exchange and on two Canadian stock exchanges, *viz.*, by purchasing and selling large quantities of CJL common stock in order to create an illusion of widespread, *bona fide* buying interest when, in fact, these transactions were matched orders and wash sales,[1]

[1] "Wash" sales are transactions involving no change in beneficial ownership. "Matched" orders are orders for the purchase or sale of a security that are made with the knowledge that orders of substantially the same size, at substantially the same price, have been

designed artificially to increase and maintain the price of CJL stock. Once the public had an opportunity to become familiar with these allegations, the Commission permitted trading in CJL stock to resume.[2]

3. The Commission previously had issued a series of orders suspending trading in CJL common stock from November 29, 1973, through January 26, 1975, because, *inter alia*, CJL appeared to have disseminated false and misleading press releases concerning its business activities. See Securities Exchange Act Release No. 11172, 6 SEC Docket 53 (January 9, 1975). Respondent Samuel H. Sloan, who owns 13 shares of CJL stock (App. 115), had filed a petition for review of those suspension orders in the United States Court of Appeals for the Second Circuit (Pet. App. B, p. 8a). By the time the court of appeals heard argument in that case, the first series of suspension orders had terminated and the second series had begun. The court concluded that it could not undertake to review the second series of orders with the case in that posture (*Sloan* v. *Securities & Exchange Commission*, 527 F. 2d 11, 12 (C.A. 2), certiorari denied, 426 U.S. 935):

> We consider [respondent's] blunderbuss attack frivolous except for his allegation that the "tacking" of ten-day summary suspension orders by the SEC for an indefinite period constitutes an abuse of that agency's authority

or will be entered by the same or different persons for the sale or purchase of such security. See *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 205 n. 25.

[2] The Commission's action is still pending in the district court.

> and a deprivation of due process. * * * We cannot decide [the question] on the record before us. The record is entirely silent as to the reasons for the second series of suspensions, commencing in April of this year; we cannot tell whether they are based on substantial evidence, and hence cannot decide if they amount to an abuse of discretion by the SEC.

After observing that respondent might wish to challenge the second series of suspension orders as well as the first, and that the Commission was "willing * * * to grant [respondent] some sort of administrative hearing, thus satisfying any possible exhaustion [of remedies] requirement while also contributing to the record" (527 F. 2d at 12), the court dismissed the petition for review "without prejudice to [respondent's] repleading after an administrative hearing * * * from which judicial review may be sought" (*ibid.*).

4. In March 1976, pursuant to the court of appeals' suggestion, respondent asked the Commission to reconsider its orders suspending trading in CJL common stock (App. 113). In particular, respondent requested that the Commission refrain from issuing any further orders suspending trading in CJL stock, that the Commission declare its past suspension orders illegal, and that he be given an oral hearing before the Commission on his various requests (App. 113–120).

The Commission denied these requests (App. 109–110).[3] The Commission explained that the first series

[3] The next day, the Commission announced the adoption of informal procedures, of the kind applied to respondent, by which

of suspension orders had been based upon suspected violations of registration, reporting, and antifraud provisions of the securities laws and upon substantial allegations that CJL "had disseminated a series of press releases containing false and misleading information relating to its purported development of Panamanian mineral properties" (App. 109).[4] The Commission further explained that the second series of suspension orders had been issued "as a result of a lack of information concerning pending investigative action by Canadian regulatory authorities" (App. 110).

"any person adversely affected by a summary suspension pursuant to Section 12(k) of the Securities Exchange Act may obtain prompt consideration by the Commission of the reasons such person believes the continued suspension is not in the public interest or is not required for the protection of investors" (Pet. App. E, pp. 24a–26a; Securities Exchange Act Release No. 12361, 41 Fed. Reg. 18290). These procedures provide such persons with an opportunity for a hearing in the following circumstances (Pet. App. E, p. 25a):

"[I]f upon examination of the petition [requesting a hearing] the Commission is of the opinion that there is a genuine issue as to any material fact * * *. If no such opportunity is requested in the petition or if in the opinion of the Commission there is no genuine issue as to any material fact, the Commission will determine the issue upon the basis of the information contained in the petition and other relevant facts known to the Commission."

[4] The Commission instituted a civil action against CJL and certain of its principals based upon these allegations. *Securities and Exchange Commission* v. *Canadian Javelin, Ltd. et al.*, S.D. N.Y., No. 73–5074. On July 17, 1974, CJL and John C. Doyle, its president, consented to an order in that case permanently enjoining them from violating the reporting and antifraud provisions of the Securities Exchange Act. See Securities Exchange Act Release No. 11172, *supra*.

The Commission elaborated (*ibid.*):

> According to criminal informations returned in Canada, it appears that the common stock of Canadian Javelin may have been artificially manipulated on two Canadian stock exchanges, and that this was continuing after January 26, 1975. The Commission is actively investigating, among other things, possible manipulation of the stock in the United States securities markets. * * *
>
> In addition, a number of private civil suits are pending in Canada involving a dispute regarding control of the company. A Canadian provincial court recently issued an order installing a new board of directors and this order is now on appeal.[5]

5. Respondent then initiated this case by again petitioning for review in the United States Court of Appeals for the Second Circuit, challenging the validity of the suspension orders issued after April 29, 1975 (Pet. App. B, pp. 10a–11a). He contended, *inter alia*, that the issuance of successive ten-day suspension orders violated Section 12(k)'s limitation of such orders to "a period not exceeding ten days."

No suspension order was in effect with respect to CJL by the time the court of appeals heard argument. The court nevertheless rejected the Commission's argument that the case had become moot when the last suspension order expired on May 2, 1976. The court

[5] The Commission also noted that CJL was "delinquent with respect to the filing of its 10–K report" (App. 110).

held that "[b]ecause of the SEC's continuing policy of roll-over ten-day suspension orders, the harm to [respondent] was 'capable of repetition yet evading review'" (Pet. App. B, p. 16a).

On the merits, the court held that Section 12(k) does not authorize the Commission to issue consecutive suspension orders. The Court rejected the Commission's contention that when Congress amended the statute in 1964 and again in 1975, it had acquiesced in the Commission's practice of issuing such orders. The court concluded from the legislative history of the 1975 amendments that in cases of extended duration Congress expected the Commission to use its authority under Section 12(j) of the Act, 89 Stat. 118, 15 U.S.C. (Supp. V) 78*l*(j), which authorizes the agency to suspend or revoke the registration of a security for a period not exceeding twelve months if it finds after notice and opportunity for a hearing that the issuer has failed to comply with the Act or regulations thereunder.

The court concluded by directing the Commission "to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading in a security for an extended period, *i.e.*, in excess of ten days" (Pet. App. B, p. 17a).[6]

[6] In its original opinion, the court of appeals had stated that its reading of the statute was supported by a provision of Section 12(k) authorizing the Commission, with the President's approval, summarily to suspend trading for a period not exceeding 90 days (Pet. App. B, p. 14a). On rehearing, the court excised that discussion from its opinion (Pet. App. C, pp. 19a–20a).

SUMMARY OF ARGUMENT

I. This case is moot as to respondent viewed narrowly in his capacity as a CJL shareholder. It may not, however, be moot as to respondent in his capacity as an investor generally. That issue turns upon whether any security held by respondent is likely to be subjected to successive orders suspending trading within the foreseeable future.

In these circumstances, in view of the large number of security issues respondent claims to own, application of principles of mathematical probability may be appropriate to a determination of the issue of mootness. At present, however, there are insufficient facts of record to permit assessment of the mathematical probability that at least one of the securities respondent owns will again be subject to consecutive orders suspending trading. If respondent furnishes additional information with respect to his holdings, we will endeavor to make that assessment. But the facts currently of record do not clearly establish the existence of a continuing live controversy.

II. A. Section 12(k) of the Act provides that, "[i]f in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security * * * for a period not exceeding ten days." The two limitations on the Commission's power to suspend trading—that the Commission determine that suspension is required by the public interest and the protection of investors, and that any single order remain in effect for not more than ten days—require

only that the Commission make a fresh determination every ten days as a prerequisite to the issuance of a successive order.

For example, there can be no doubt that if the Commission finds evidence of new manipulative activity shortly after expiration of an earlier suspension order, it may issue a second suspension order. It follows that, if the new evidence were discovered during the pendency of the first suspension order, the Commission could issue a successive order; no statutory purpose would be served by requiring an intervening period during which trading would resume in such circumstances. Thus the statute does not bar successive orders *per se*. Finally, nothing in the statute requires the Commission to consider only new evidence in evaluating the needs of the investing public. Therefore, if the Commission determines that existing conditions are such that the public interest and the protection of investors require a renewed suspension of trading, it may issue a successive suspension order even in the absence of evidence of new market disruption.

B. This construction is reflected in the Commission's consistent practice since 1944, when it first made use of the suspension power. When threats to fair and orderly markets that caused the Commission initially to suspend trading have continued for more than ten days, the Commission has reassessed the situation as each ten-day period expired to determine whether a further suspension was required. This longstanding and consistent administrative construction is entitled to great weight.

C. The administrative construction was endorsed by Congress in 1964 when it enacted former Section 15(c)(5), which extended the Commission's summary suspension authority to securities traded in the over-the-counter market. The Commission participated in the drafting of the amendment and explicitly advised Congress of its practice of issuing more than one suspension when it found at the end of the ten-day period that another suspension was necessary. In favorably reporting upon the amendment, the pertinent Senate committee expressly stated that it "accepts this interpretation." S. Rep. No. 379, 88th Cong., 1st Sess. 66–67 (1963).

D. Section 12(j) of the Act, which empowers the Commission to suspend or revoke the registration of a security after a hearing, does not imply a limitation on the Commission's power to suspend trading under Section 12(k). Section 12(j) differs in several important respects from Section 12(k). First, Section 12(j) applies only to securities subject to registration, whereas Section 12(k) applies to all publicly traded securities, whether or not registered. Second, Section 12(j) may be invoked only where the Commission finds misconduct by the *issuer*, whereas trading may be suspended under Section 12(k) whenever the public interest and the protection of investors so require, including situations that involve no misconduct by the issuer, *e.g.*, manipulation or fraud by third parties, corporate crises, situations where adequate financial information is unavailable or where markets have been disrupted by speculation based upon rumors of

doubtful accuracy. Third, where both provisions apply, suspension of trading under Section 12(k) may be used to protect investors while deregistration proceedings under Section 12(j) are pending. Fourth, suspension of trading under Section 12(k) is a temporary prophylactic measure aimed at preventing loss to investors because of unfair interferences with an orderly market; it contemplates a resumption of trading when the threat has passed. Under Section 12(j), however, the Commission makes a single determination revoking registration permanently or suspending it for a fixed term. Because deregistration not only eliminates exchange and over-the-counter markets for the issue involved, but also excuses the issuer from the reporting requirements of the Act, temporary suspension under Section 12(k), subject to periodic reexamination every ten days, carries less severe consequences for investors than the drastic remedy of deregistration.

In 1975, Congress consolidated the Commission's authority to suspend trading for ten-day periods in new Section 12(k) of the Act, and placed in Section 12(j) the Commission's authority to suspend or revoke the registration of the security for issuer misconduct. The amendments, however, did not effect any substantive change in the Commission's powers. The pertinent Senate committee indicated that it would expect the Commission to use Section 12(j) "rather than its ten-day suspension power in cases of extended duration." S. Rep. No. 94–75, 94th Cong., 1st Sess. 106 (1975). But, by so stating, the Committee was recommending only that in cases of extended dur-

ation to which both Section 12(j) and Section 12(k) apply, the Commission, in exercising its broad remedial discretion, ordinarily should initiate deregistration proceedings rather than rely upon the issuance of successive trading suspension orders. But even though the Committee expressed a preference as to how the Commission should proceed, it left the final decision as to the appropriate mode of enforcement in particular cases to the Commission's discretion.

E. The court of appeals' construction of Section 12 (k), barring the Commission from issuing a successive suspension order even when the public interest and the protection of investors so requires, defeats the remedial purpose of the statute. The Commission has found that, in many widely varying situations, protection of the investing public requires successive suspensions of trading in order to maintain orderly and fair capital markets. The court of appeals apparently was concerned over the impact on investors of successive suspensions. But such a concern goes to the soundness of the Commission's exercise of its discretion in particular cases, not to its statutory power to issue successive suspension orders.

ARGUMENT

I

THE FACTS OF RECORD IN THIS CASE DO NOT ESTABLISH THE EXISTENCE OF A CONTINUING LIVE CONTROVERSY

In the petition for a writ of certiorari, we pointed out that "[t]he suspension of trading in CJL stock

had been terminated in May 1976, prior to argument below and more than five months before the decision in this case" (Pet. 11), and we further explained (Pet. 12, n. 7):

> Trading in CJL stock was permitted to resume once all the facts relating to issuer misconduct had been made public. Since the investing public now has been apprised of the relevant facts, the concealment of which had threatened to disrupt the market in CJL stock, there is no reason to believe that it will be necessary to suspend trading again.

We contended that these considerations rendered the case moot as to respondent (Pet. 11–12; footnotes omitted):

> The court [of appeals] * * * concluded that the case was not moot, reasoning that "[b]ecause of the [Commission's] continuing policy of roll-over ten-day suspension orders, the harm to [respondent] was 'capable of repetition yet evading review'" [Pet. App. B, p. 16a]. But as this Court explained in *Weinstein* v. *Bradford*, 423 U.S. 147, 149, "*Sosna* [v. *Iowa*, 419 U.S. 393] decided that in the absence of a class action, the 'capable of repetition, yet evading review' doctrine was limited to the situation where two elements combined: (1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again." Cf. *Securities and Exchange Commission* v. *Medical Committee for Human Rights*, 404

> U.S. 403. This is not a class action, and respondent has not shown that he is likely to be adversely affected by consecutive suspension orders in the future. Accordingly, respondent's case is moot and should not have been decided on the merits. Cf. *Securities and Exchange Commission* v. *Lea Fabrics, Inc.*, 363 U.S. 417.

In rejoinder, respondent asserted (Br. in Response, p. 18):

> As Respondent set forth in an affidavit filed with the court of appeals in opposition to the S.E.C.'s motion in that court to dismiss this case as moot, Respondent continues to own stock in nearly 400 publicly traded corporations and in view of the S.E.C.'s proclivity for issuing trading suspension orders, it is apparent that it is only a question of time before the S.E.C. suspends trading in another security so as to adversely affect Respondent.

In granting the petition for a writ of certiorari in this case, the Court directed the parties to "brief and argue the question of the possibility of mootness" (App. 213).

Our argument that the case became moot once trading in CJL stock was permitted to resume was directed to respondent principally in his capacity as a CJL shareholder. But, subject to certain qualifications, we agree with respondent that he may be entitled to rely upon his capacity as an investor generally in an effort to defeat a claim of mootness: in our view, the question of mootness in this case is whether CJL or any other security, while held by respondent, is

likely to be subjected to consecutive orders suspending trading within the foreseeable future.[7]

In the case of an ordinary individual shareholder, the evaluation of the issue of mootness in a context such as this would not be significantly affected by whether he was viewed in his capacity as an investor generally or merely in his capacity as a holder of the particular security initially at issue. We relied upon that consideration in arguing that the case was moot both before the court of appeals and in our petition for a writ of certiorari. But respondent in this Court has alleged ownership of such a large number of security issues (approximately double the number he claimed to own in the court of appeals; see App. 153), so that an application of principles of mathematical probability may be appropriate to a determination of the issue of mootness.

At present, however, we do not have sufficient facts at our disposal to assess the mathematical probability that at least one of the securities respondent owns will be subjected, while held by him, to consecutive orders suspending trading within the foreseeable future. Such an assessment would be based upon the relationship of three numbers—(1) the number of publicly traded corporations of which respondent is a shareholder; (2) the number of securities that may be expected to be subject to consecutive trading suspen-

[7] We do not mean to suggest that every shareholder of a corporation in whose securities trading has been suspended has standing to challenge the order of suspension. To have standing, a shareholder would be required to establish that he was aggrieved by the order, *e.g.*, that the order had the effect of freezing assets that he had a verifiable desire to liquidate.

sion orders in a single year; and (3) the number of corporate issuers that have publicly traded securities. The latter two numbers have been established to our satisfaction. First, "the Commission's power to issue consecutive 10-day suspension orders has been exercised with respect to an average of 20 securities each year for the past 12 years" (Pet. Reply Mem. 2–3), and it is not unreasonable to project that trend into the future (assuming *arguendo* that the Commission retains the power to issue such orders). Second, the Commission's staff has estimated that between 25,000 and 30,000 corporations have publicly traded stock.

But, the number of publicly traded corporations in which respondent owns shares now is in doubt. In the court of appeals, respondent stated only that he owned "securities of more than 200 corporate issuers" (App. 153). He now claims "to own stock in nearly 400 publicly traded corporations" (Br. in Response, p. 18). A more accurate count is necessary before a meaningful assessment of probability bearing upon mootness may be made.

Moreover, application of principles of mathematical probability ideally would require information about the nature of respondent's portfolio. If the bulk of the securities respondent owns are listed on the New York Stock Exchange, or are of other well established and widely held corporations (such as many banks and insurance companies whose shares are traded over the counter), the practical likelihood of a suspension order may be small indeed since suspension of trading in such securities is extremely

rare. On the other hand, if respondent's securities are predominantly those of less established issuers, there could well be a substantial probability that one of them will be subject to consecutive orders suspending trading within the next few years.[8]

If respondent submits an affidavit stating the precise number of publicly traded issues he owns, and the number of those that are listed on the New York Stock Exchange or are of large banks and insurance companies, and further shows that he will continue to hold approximately as many similar securities in the next five years, we can then make an adequate assessment whether there is a "reasonable expectation that [respondent, in his capacity as an investor, will] be subjected to the same action again." *Weinstein* v. *Bradford*, 423 U.S. 147, 149. The facts of record at

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[8] If we assume that the securities respondent holds are randomly distributed with respect to the characteristics that lead to suspension of trading, the mathematical probability (P) that within a single year one of those issues will be subject to consecutive suspension orders is equal to

$$1-\frac{a!\ (a+b-n)!}{(a-n)!\ \ (a+b)!}$$

where a=the number of publicly traded issues respondent does not own, b=the number of such issues he does own, and n=the number of issues that will be subjected to consecutive suspension orders. See, *e.g.*, Freund, *Mathematical Statistics* 77–79 (2d ed.). If we posit a universe of 30,000 publicly traded issues and assume that respondent owns securities of 400 corporations, and therefore set a=29,600, b=400, and n=20, we find that P=.236. The mathematical probability that one of respondent's holdings will be subject to consecutive suspension orders within five years is $1-(1-P)^5$, or, upon these assumptions, approximately .740. In other words, the odds would be roughly three to one in favor of a consecutive suspension of trading in one of respondent's securities within the next five years, assuming that he will continue to hold approximately the same number of securities in this period.

present, however, are not sufficient to show a high probability that one of respondent's holdings will be subjected to a series of consecutive suspension orders in the near future; they therefore do not clearly establish the existence of a continuing live controversy, since, for the reasons stated in our petition for a writ of certiorari (Pet. 11–12), the case is moot as to respondent considered only in his capacity as a CJL shareholder.

II

UPON EXPIRATION OF A TRADING SUSPENSION ORDER ISSUED UNDER SECTION 12(k) OF THE SECURITIES EXCHANGE ACT, THE COMMISSION MAY ISSUE ANOTHER SUCH ORDER IF IN ITS OPINION THE PUBLIC INTEREST AND THE PROTECTION OF INVESTORS SO REQUIRE

Former Section 19(a)(4) of the Securities Exchange Act of 1934 granted the Commission authority summarily to suspend trading for ten days in securities listed on national exchanges. This authority was extended in 1964 to securities traded in the over-the-counter market, by the enactment of former Section 15(c)(5) of the Act. In 1975, these two provisions were consolidated in present Section 12(k) of the Act, which provides:

> If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days * * *.[9]

[9] Exempted securities include those issued or guaranteed by federal, state, or local governments, interests in certain kinds of trust funds, and other securities specifically exempted by the Commission. 15 U.S.C. (Supp. V) 78c(12).

Nothing in the language of this statute, or of its predecessors, bars the Commission from exercising the authority to suspend at the expiration of an earlier ten-day suspension. To the contrary, the consistent and long-standing administrative construction of these provisions is that the authority to suspend may be exercised whenever the Commission concludes that the public interest and the protection of investors so require. Congress has accepted this construction, which furthers the statute's remedial purpose.

A. THE LITERAL TERMS OF THE STATUTE DO NOT BAR ISSUANCE OF SUCCESSIVE SUSPENSION ORDERS

Section 12(k), like its predecessors, affirmatively grants to the Commission authority to suspend trading in individual securities. For the purposes of the present discussion, the only relevant limitations the statute places on that authority are (1) that, before an order to suspend trading is issued, the Commission must determine that the suspension is required by the public interest and the protection of investors, and (2) that any single order may remain in effect for not more than ten days. These two limitations do not bar the Commission from issuing a new suspension order upon the expiration of an earlier order. They necessitate only that, as a prerequisite to the issuance of a successive suspension order, the Commission reassess the circumstances pertaining to the security and make a fresh determination of what the public interest and the protection of investors require.

Consideration of a few examples dictates the conclusion that the Commission's power to suspend trading in a particular security is not exhausted by its first exercise. First, the statutory phrase "for a period not exceeding ten days" cannot mean that there may be only one period of suspension for each security. Thus, if the Commission detects a manipulative scheme affecting a security and therefore suspends trading in that security for ten days, it must retain the power to suspend trading anew if, 30 days later, it detects yet another manipulative scheme. The phrase "for a period not exceeding ten days" therefore can only be read as limiting the duration of a single suspension order, not as limiting the amount of time that a particular security may be subject to suspension of trading.

But if trading may be suspended anew upon the discovery of a second manipulative scheme 30 days later, surely a new suspension order also could issue if the second scheme were uncovered only ten days after the first had been detected, *i.e.*, upon the eve of the expiration of the first suspension order. No statutory purpose would be served by requiring an intervening period during which trading would resume, when discovery of a second manipulative scheme independently warrants a second suspension in the public interest and for the protection of investors. Thus the phrase "for a period not exceeding ten days" cannot reasonably be construed as barring successive suspension orders in all circumstances.

New evidence of manipulative activity justifies a successive suspension of trading because such evidence affords a basis for determining that the public interest and investors' protection require such a suspension. But nothing in the statute compels the Commission to consider only new evidence in evaluating the needs of the investing public. To the contrary, it is consistent with the statute for the Commission, even in the absence of new evidence of fresh manipulative activity, to determine that existing conditions are such that the public interest and the protection of investors require a renewed suspension of trading.

In short, the statutory language does not bar successive suspension orders at all. It requires only that the Commission make a new determination of the public interest, and of the needs of investors, before issuing a successive order suspending trading for a further ten-day period.

B. THE CONSISTENT AND LONG-STANDING ADMINISTRATIVE CONSTRUCTION IS THAT THE STATUTE AUTHORIZES SUCCESSIVE SUSPENSION ORDERS

The Commission's first use of its summary suspension power under the predecessor of Section 12(k) involved successive orders that resulted in the suspension of trading for almost one month. ***Elastic Stop Nut Corp. of America,*** Securities Exchange Act Release No. 3626 (November 29, 1944). Before 1964, when the Commission's summary suspension power was extended to securities traded in the over-the-counter market, the Commission had exercised that power with respect to 30 securities, and in only one

case was trading permitted to resume upon the expiration of the first ten-day suspension. See Goldman & Magrino, *Suspension of Trading in Securities: Some Observations on Section 15c(5) of the Securities Exchange Act of 1934*, 15 N.YL. Forum 633, 658–662 (1969); II Loss, *Securities Regulation* 852–854 (2d ed. 1961). Professor Loss had noted with respect to these suspensions (*id.* at 854):

> Although the suspension power * * * is limited to ten days, the Commission followed the policy in these cases of entering a series of orders until it was able to issue a release stating the essential facts. And * * * it timed the lifting of its suspension so that the public would have some opportunity to be informed of those facts before the resumption of exchange trading. Presumably a single ten-day suspension order does not exhaust the Commission's power * * * if it makes a new determination every ten days of the necessity of continuing the suspension * * *.

Until the decision in this case, the Commission consistently followed the practice described by Professor Loss. Between the enactment of the 1964 amendment and the decision of the court of appeals in November 1976, the Commission had exercised its authority summarily to suspend trading with respect to 941 securities; in 235 of these cases successive orders were issued resulting in the suspension of trading for more than ten consecutive days.[10]

[10] This information was derived by the Commission from a review of its records.

The situations in which the Commission has found that trading must be suspended in the public interest and for the protection of investors vary widely. Professor Loss has identified five general categories (V Loss, supra, at 2816–2822 (1969 Supp. to Vol. II)):

> (1) There have been a few cases of what might be called the "crisis" type * * * [as, for example, where t]he president resigned when it became known that he had withdrawn funds from the company. * * *
>
> (2) * * * [T]here is a group of cases in which the suspension was designed to prevent trading until the Commission might obtain appropriate injunctive relief, usually against fraud or manipulation or an unregistered distribution * * *.
>
> (3) Most of the cases have involved simply a severe inadequacy of (or sometimes misleading) financial information. * * *
>
> (4) In all the cases in the last category * * * the Commission ultimately permitted trading to resume. There is another group of about the same size in which the Commission instituted a delisting proceeding contemporaneously with or shortly after its first suspension order [pursuant to former Section 19(a)(2) of the Securities Exchange Act, the predecessor of Section 12(j) of the Act] which was based similarly on a severe inadequacy of financial information, so that in most cases trading, at least on an exchange, never did resume. * * *
>
> (5) * * * [When] the market ha[s] been strongly influenced by news or rumors of doubtful accuracy * * *.

With regard to each of these categories, the threats to fair and orderly markets that caused the original suspension may continue for more than ten days. Where this has been so, the Commission has reassessed the situation as each ten-day order expired, to determine whether a further suspension was required. This has been its consistent practice for the past 33 years, since the first suspension order was issued in 1944. The Commission's long-standing and consistent construction is entitled to great weight. See *E. I. duPont de Nemours & Co.* v. *Collins,* No. 75–1870, decided June 16, 1977 (slip op. 9); *United States* v. *National Association of Securities Dealers, Inc.,* 422 U.S. 694, 719; *Saxbe* v. *Bustos,* 419 U.S. 65, 74; *Investment Co. Institute* v. *Camp,* 401 U.S. 617, 626–627; *Red Lion Broadcasting Co.* v. *Federal Communications Commission,* 395 U.S. 367, 381; *Udall* v. *Tallman,* 380 U.S. 1, 16; *Power Reactor Co.* v. *Electricians,* 367 U.S. 396, 408.

C. CONGRESS HAS ENDORSED THE COMMISSION'S CONSTRUCTION OF THE STATUTE

Where Congress has reenacted or significantly amended a statute without disapproving the agency's construction, Congress may appropriately be considered to have approved that construction as correct. See, *e.g., United States* v. *Correll,* 389 U.S. 299, 305–306; *Fribourg Navigation Co.* v. *Commissioner of Internal Revenue,* 383 U.S. 272, 283; *Costanzo* v. *Tillinghast,* 287 U.S. 341, 345. Moreover, the agency's construction "carries most weight when the adminstrators participated in drafting [the legislation] and directly made known their views to Congress in committee hearings." *Zuber* v. *Allen,* 396 U.S. 168, 192.

These principles compel the conclusion that Congress has accepted and approved the Commission's practice of issuing consecutive ten-day suspension orders. At the time Congress enacted former Section 15(c)(5), extending the Commission's summary suspension authority to securities traded in the over-the-counter market, the Commission both participated in the drafting of the amendment and explicitly advised Congress of its long-standing practice, and the pertinent Senate Committee expressly endorsed the agency's construction.

The amendment adding former Section 15(c)(5) was drafted by the Commission's staff and submitted to Congress as part of the Commission's legislative program in 1963. Hearings on S. 1642 (SEC Legislation) before a Subcommittee of the Senate Committee on Banking and Currency, 88th Cong., 1st Sess., 1–2, 333–334 (1963) (hereinafter "Senate Hearings"). During the hearings on its legislative proposals, the Commission advised the House Committee on Interstate and Foreign Commerce (Hearings on H.R. 6789, H.R. 6793, S. 1642 (Securities Exchange Act of 1934 Amendments: Investor Protection) before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. 219 (1963) (hereinafter "House Hearings")):

> Under section 19(a)(4), the Commission has issued more than one suspension when, upon reexamination at the end of the 10-day period, it has determined that another suspension is necessary. At the same time the Commission has

> recognized that suspension of trading in a security is a serious step, and therefore has exercised the power with restraint and has proceeded with diligence to develop the necessary facts in order that any suspension can be terminated as soon as possible. The Commission would follow that policy in administering the proposed new section 15(c)(5).

The Senate Committee on Banking and Currency, in reporting favorably on the proposed expansion of the Commission's trading suspension powers, confirmed that it understood and approved the Commission's long-standing statutory interpretation (S. Rep. No. 379, 88th Cong., 1st Sess. 66–67 (1963) (emphasis added)):

> The Commission has consistently construed section 19(a)(4) as permitting it to issue more than one suspension if, upon reexamination at the end of the ten-day period, it determines that another suspension is necessary. *The committee accepts this interpretation.* At the same time the committee recognizes that suspension of trading in a security is a drastic step and that prolonged suspension of trading may impose considerable hardship on stockholders. The committee therefore expects that the Commission will exercise this power with restraint and will proceed with all diligence to develop the necessary facts in order that any suspension can be terminated as soon as possible.

Subsequent to issuance of the Senate Report, the House Committee on Interstate and Foreign Commerce also favorably reported on the amendment (H.R. Rep. No. 1418, 88th Cong., 2d Sess. 24 (1964)), which Congress then enacted. Section 6(c) of Pub. L. 88–467, 78 Stat. 574.

D. THE COMMISSION'S SEPARATE AUTHORITY TO SUSPEND OR REVOKE THE REGISTRATION OF A SECURITY DOES NOT IMPLY A LIMITATION ON THE COMMISSION'S POWER TO SUSPEND TRADING

The Commission is empowered under Section 12(j) of the Act, the successor to former Section 19(a)(2) of the Act, 48 Stat. 898, to suspend, for a period not exceeding twelve months, or to revoke the registration of a security if it finds, after notice and opportunity for a hearing, "that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder." The court of appeals concluded that in cases of extended duration Congress intended the Commission to rely upon this authority rather than upon its authority to suspend trading under Section 12(k) (Pet. App. B, pp. 13a–14a). But the court did not grasp the significant differences between these two statutory authorities, and it misread the legislative history upon which it rested its conclusion.

1. Although a suspension of registration encompasses a suspension of trading, Sections 12(j) and 12(k) nevertheless differ in several important respects. First, Section 12(j), relating to suspension or revocation of registration, applies only to securities registered with the Commission, *i.e.*, securities traded on a national securities exchange or issued by

corporations having assets of $1 million or more and 500 or more shareholders. 15 U.S.C. 78*l* (b) and (g). In contrast, Section 12(k), relating to suspension of trading, applies as well to securities that need not be registered but nevertheless may be traded in the over-the-counter market. Thus the protections afforded by Section 12(k) extend to a broader spectrum of securities.

Second, Section 12(j) may be invoked only where the Commission finds misconduct by the issuer. But trading may be suspended under Section 12(k) whenever the public interest and the protection of investors so require, including situations that involve no misconduct by the issuer, *e.g.*, in cases involving manipulation or fraud by third parties,[11] in corporate

[11] An example involving manipulative activities by persons unconnected with the issuer, to which Section 12(j) is inapplicable, is provided by the history of the suspension of trading in the stock of Power Conversion, Inc. ("Power"). On October 6, 1972, the Commission suspended trading in Power's common stock for ten days because of "unusual market activity in Power's securities and the lack of information to account for the activity." Securities Exchange Act Release No. 9810 (October 10, 1972). See also Securities Exchange Act Release No. 10002 (February 12, 1973). The stock had been publicly offered at $5 per share in March 1972 but had risen to a bid price of $45.25 shortly before the suspension. In the two trading days immediately preceding the suspension, the bid price declined from $39.75 to $5. *Ibid.* Power management stated that it was aware "of no internal development * * * to justify [either] the rapid price increase * * * or its subsequent rapid price decline." *Ibid.* Subsequently, it was determined that a trader in Power common stock "was deeply involved in a scheme to defraud and manipulate the market in Power." *Ibid.* After this information was disseminated to the public, trading in Power stock was permitted to resume.

crises, in situations where adequate financial information is unavailable and where markets have been disrupted by speculation based upon rumors of doubtful accuracy.[12] In the latter situations, the Commission is without authority to act under Section 12(j): even when the disruptive conditions persist for more than ten days, suspension of trading under Section 12(k) remains the only effective protection immediately available to investors.

Third, as Professor Loss has noted (see p. 25, *supra*), in situations where both Section 12(j) and Section 12(k) apply, suspension of trading under Section 12(k) may be used to complement deregistration proceedings under Section 12(j), in order to

[12] For example, the Commission has suspended trading at the request of an issuer in order that the issuer could "make available to its shareholders and to the general public certain material financial and other information which was not available to the investing public or to the stockholders generally." Securities Exchange Act Release Nos. 8346, 8365 (June 26, 1968; July 29, 1968). See also, *e.g.*, Securities Exchange Act Release Nos. 8088, 8182 (May 26, 1967; October 20, 1967). See V Loss, *supra* at 2819–2821.

During the past year, the Commission suspended trading in a number of related railroad stocks, at the request of the corporations involved, "pending announcement by Penn Central Transportation Company of its proposed plan of reorganization." See Securities Exchange Act Release Nos. 13064, 13505 (December 13, 1976; May 4, 1977).

In addition, there have been occasions when courts have advised the Commission that a decision was imminent in an action pending before the court that might have an impact on the market for a particular security. In such circumstances, the Commission sometimes has suspended the trading of the security to allow time for investors to consider the implications of the decision. See Securities Exchange Act Release No. 11208 (January 24, 1975).

ensure that investors remain protected while such proceedings are pending. The Commission may suspend or revoke registration under Section 12(j) only after it determines "on the record after notiice and opportunity for hearing" that an issuer violated the Act or regulations thereunder. It is impossible, within a ten-day period, for the Commission to (a) conduct an investigation sufficient to determine whether an administrative proceeding pursuant to Section 12(j) ought to be instituted; (b) provide the issuer with adequate notice of the alleged violations; (c) hold a hearing on the record before an administrative law judge;[13] (d) permit the administrative law judge to consider the matter prior to rendering an initial decision; and (e) review the initial decision rendered by the administrative law judge. If Section 12(j) were the only remedy available where the market disruption is of extended duration, trading in a security affected by manipulative activity could then resume upon the expiration of the first ten-day trading suspension order and continue until the deregistration proceedings were completed months later. In the meantime, investors would be exposed to serious risk of injury.

Fourth, Sections 12(j) and 12(k) differ significantly in the way that they protect investors. Suspension of trading under Section 12(k) is a temporary prophy-

[13] As a general rule, at least six months is required to hold a hearing "on the record after notice and opportunity for hearing * * *." See Rules 6 through 22 of the Commission's Rules of Practice, 17 C.F.R. 201.6 through 201.22.

lactic measure the need for which must be determined *de novo* by the Commission every ten days. Trading is permitted to resume when the threat has passed. Moreover, when trading is suspended under Section 12(k), the issuer remains subject to, *inter alia*, the periodic reporting requirements and proxy provisions of the Act, and officers and directors of the issuer and beneficial owners of more than 10 percent of the issuer's stock must continue to file ownership reports with the Commission. See 15 U.S.C. 78m, 78n, and 78p. These important protections are lost when the registration of a security is revoked pursuant to Section 12(j). As Professor Loss has observed (II Loss, *supra*, at 845):

> The remedy [of deregistration] is Draconian. When management fails to comply with some provision of the act or the Commission's rules—perhaps because it would just as soon be done with the obligations of registration anyway—it makes little sense to visit the sin on the innocent security holders by depriving them of an exchange market, not to mention the statutory advantages of registration.[14]

[14] Under present law (Section 12(j)), security holders would also be deprived of the over-the-counter market.

During the first decade of its existence, the Commission instituted 76 deregistration proceedings pursuant to former Section 19(a)(2) of the Act. Substantially all of these proceedings involved "small companies with negligible assets and little or no investor interest * * *." II Loss, *supra*, at 846. The Commission has rarely used that authority since 1944. As the Commission explained to Congress in 1963: "The sanction of delisting for fail-

2. When the Securities Acts Amendments of 1975 were enacted, the provisions formerly containing the Commission's authority to suspend trading were consolidated in new Section 12(k) of the Act. Section 9 of Pub. L. 94–29, 89 Stat. 118. The report of the Senate Committee on Banking, Housing and Urban Affairs explained that Section 12(k) was intended merely to restate and "consolidate in one place the power the SEC presently has under [former] sections 15(c)(5) and 19(a)(4)." S. Rep. No. 94–75, 94th Cong., 1st Sess. 106 (1975). There is no indication that any substantive change was intended.

At the same time, Congress transferred the Commission's authority to suspend or revoke registration from Section 19(a)(2) to new Section 12(j), and added a provision making it unlawful for a broker or dealer to trade in securities whose registrations had been suspended or revoked."[15]

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ure to comply with the provisions of the act has been imposed only infrequently by the Commission because delisting would have the effect of relieving the issuer of the duty of complying with the disclosure provisions of the act and would deprive investors of an exchange market for the trading of their securities." Senate Hearings, *supra*, 403; House Hearings, *supra*, 183.

[15] The proposal to shift Section 19(a)(2) to Section 12(j) originated in 1973 in S. 2519, 93d Cong., 1st Sess. That bill made no reference to the Commission's power to suspend trading. The Senate Report stated that "[t]his subsection would merely provide a more logical placement of the authority the SEC already has under present Section 19(a)(2)." S. Rep. No. 93–865, 93d Cong., 2d Sess. 43 (1974).

The Senate Committee explained (S. Rep. No. 94–75, *supra*, at 106):

> Subsection (j) would provide a more logical placement of the authority the SEC already has under present section 19(a)(2) to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to withdraw the registration of any security if it finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder. It would also make unlawful any trading in any such security by any broker or dealer. With this change, the Commission is expected to use this section rather than its ten-day suspension power in cases of extended duration.

The court of appeals read the final sentence of that passage as indicating a legislative intent to deprive the Commission of power to issue successive suspension orders with respect to a particular security. That is an unduly broad reading of a sentence that is no more than precatory. Indeed, correctly read, that sentence refutes the holding of the court of appeals, for it implies that the Committee knew that the Commission continued to possess the authority, which the Committee had approved in 1964 (see pp. 26–29, *supra*), to issue successive trading suspension orders "in cases of extended duration." Moreover, the Committee presumably was aware that the powers conferred by Sections 12(j) and 12(k) are different in important respects (see pp. 29–33, *supra*).

Thus the plain purport of the sentence upon which the court of appeals relied is simply that the Senate Committee was recommending that in cases of extended duration to which both Section 12(j) and Section 12(k) apply, the Commission, in exercising its broad remedial discretion, ordinarily should initiate deregistration proceedings rather than rely upon the issuance of successive trading suspension orders. In other words, the Committee expressed a preference as to how the Commission should proceed, but it left the final decision as to the appropriate mode of enforcement in particular cases to the Commission's discretion. If the Committee had intended to terminate or circumscribe the authority it had earlier acknowledged to exist under the predecessors of Section 12(k), it would have done so in the text of Section 12(k) itself; it cannot be presumed to have done so merely by including precatory language in a section of its report that discusses a different provision of the Act.

E. THE COMMISSION'S CONSTRUCTION FURTHERS THE STATUTE'S REMEDIAL PURPOSE

This Court repeatedly has emphasized that the federal securities laws should be construed "not technically and restrictively, but flexibly to effectuate [their] remedial purposes." *Securities and Exchange Commission* v. *Capital Gains Research Bureau, Inc.*, 375 U.S. 180, 195. See also *Superintendant of Insurance of New York* v. *Bankers Life & Casualty Co.*,

404 U.S. 6, 12; *Affiliated Ute Citizens* v. *United States*, 406 U.S. 128, 151.

The court of appeals' construction of Section 12(k), barring the Commission from ordering "the suspension of trading in a security for an extended period, i.e., in excess of ten days" (Pet. App. B, p. 17a), defeats the remedial purpose of the statute. In many widely varying situations, the Commission has found that the remedial purposes of the statute require successive suspension of trading in particular securities, in order to maintain orderly and fair capital markets (see pp. 23–26, *supra*). Nothing in Section 12(k) or elsewhere in the Act deprives the Commission of power to issue successive suspension orders, provided only that the Commission determines, at the time of each new order, that a further period of suspension is required by the public interest and for the protection of investors.

The court of appeals apparently was concerned over the impact on investors of successive trading suspensions. But such a concern goes to the soundness of the Commission's exercise of its discretion in particular cases, not to its statutory power to issue more than one ten-day suspension order. We may assume, for argument, that in some situations the issuance of successive suspension orders over a prolonged period may constitute an abuse of discretion that a reviewing court may correct. In this proceeding, however, the court of appeals disposed of the case on the basis of "statutory construction and inter-

pretation" (Pet. App. B, p. 17a), not on grounds of abuse of discretion.

The Commission's experience between 1964 and the date of the decision below shows that in approximately 25 percent of the instances in which it has issued trading suspension orders, investors would not have been sufficiently protected if trading were to resume after ten days (see p. 24, *supra*). The decision below drastically and improperly weakens an important tool by which the Commission protects investors against unfair and disorderly markets in individual securities.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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APPENDIX

Section 12(j) and (k) of the Securities Exchange Act of 1934, as added, Pub. L. 94-29, 89 Stat. 118, 15 U.S.C. (Supp. V) 78*l*(j) and (k), provides:

> (j) The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.
>
> (k) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any na-

tional securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

Former Section 19(a)(4) of the Securities Exchange Act of 1934, 48 Stat. 898, 15 U.S.C. 78s(a)(4), provided in pertinent part:

> Sec. 19.(a). The Commission is authorized, ized, if in its opinion such action is necessary or appropriate for the protection of investors—
>
> * * * * *
>
> (4) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days.

Former Section 15(c)(5) of the Securities Exchange Act of 1934, as added, 78 Stat. 574, 15 U.S.C. 78*o*(c)(5), provided in pertinent part:

> (5) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading, otherwise than on a national securities exchange, in any security (other than an ex-

empted security) for a period not exceeding ten days. No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

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FOR ARGUMENT

Supreme Court, U. S.
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IN THE

Supreme Court of the United States

October Term, 1977

No. 76-1607

SECURITIES AND EXCHANGE COMMISSION,
Petitioner,

v.

SAMUEL H. SLOAN,
Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE SUPREME COURT
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SECURITIES AND EXCHANGE COMMISSION,

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SAMUEL H. SLOAN,

Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

BRIEF FOR THE RESPONDENT

OPINIONS BELOW

The opinion of the court of appeals (Pet. App B, pp. 3a-17a), as modified (Pet. App. C, pp. 18a-20a), is reported as 547 F. 2d 152 (2d Cir. 1976). The opinion of the Securities and Exchange Commission (App. 109-110), is reported as *In the Matter of Trading in Securities of Canadian Javelin Ltd.*, 41 Fed. Reg. 17983-17984 (April 21, 1976).

JURISDICTION

The judgment of the court of appeals was entered on November 18, 1976 (Pet. App. A, p. 1a). A timely petition for rehearing was denied on December 27, 1976 (Pet. App. C, p. 18a), and a suggestion that the rehearing be en banc was rejected on January 24, 1977 (Pet. App. F, p. 27a). On March 17, 1977, Mr. Justice Marshall extended the time for filing a petition for a writ of certiorari to and including April 25, 1977, and on April 22, 1977, he granted a further extension to and including May 15, 1977. The petition was filed on Monday, May 16, 1977, and was granted on October 17, 1977. The jurisdiction of this Court is invoked under 28 U.S.C. §1254 (1).

STATUTES AND RULES INVOLVED

Sections 556(d), Pub. L. 89-554, 80 Stat. 386, and 558(c), Pub. L. 89-554, 80 Stat. 388, 5 U.S.C. §556(d) and §558(c) of the Administrative Procedure Act. Sections 12(j) and 12(k), Pub. L. 94-29, 89 Stat. 118, 15 U.S.C. §78*l*(j) and §78*l*(k); Section 15(c)(2), Pub. L. 94-29, 89 Stat. 121, 15 U.S.C. §78*o*(c)(2); Section 25(a)(1), (2), (3),(4) and (5), Pub. L. 94-29, 89 Stat. 158, 15 U.S.C. §78*y*(a)(1),(2),(3),(4), and (5); Section 25(c)(2), Pub. L. 94-29, 89 Stat. 158, 15 U.S.C. §78*y*(c)(2); Section 32, Pub. L. 94-29, 89 Stat. 162, 163, 15 U.S.C. §78*ff;* former Section 15(c)(5), Pub. L. 88-467, 78 Stat. 574, 15 U.S.C. §78*o*(c)(5); and former Section 19(a)(4), 48 Stat. 898, 15 U.S.C. §78*s*(a)(4) of the Securities Exchange Act of 1934. Section 1651(a), 63 Stat. 102, 28 U.S.C. §165(a) of the All Writs Act. Section 2201, Pub. L. 94-455, Title XIII, Section 1306(b)(8), 90 Stat. 1719, 28 U.S.C. §2201 of the Declaratory Judgment Act. Rule 17(a) of the Federal Rules of Appellate Procedure. Rule 15c2-11, 42 Fed. Reg. 13110, 17 C.F.R. §240.15c2-11 of the Rules of the

Securities and Exchange Commission. The text of these statutes and rules are set forth in Appendix A to this brief.

QUESTIONS PRESENTED

1. Did the Securities and Exchange Commission exceed the authority given to it in §12(k) of the Securities Exchange Act of 1934, which authorizes the Securities and Exchange Commission "summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days," when it suspended trading in a security for a period of more than a year by issuing a series of thirty-seven successive ten-day suspension orders?

2. Did this case become moot when each of the thirty-seven successive ten-day suspension orders of which review was sought had expired before the time the court of appeals made its decision declaring all but the first order to be invalid?

3. Were each of the successive ten-day trading suspension orders supported by substantial evidence and, if not, must they be vacated?

4. Does §12(k) of the Securities Exchange Act of 1934, which authorizes the Securities and Exchange Commission "summarily to suspend trading in any security" whenever "in its opinion the public interest and the protection of investors so require," constitute an unconstitutional delegation of legislative authority to an administrative agency and does it violate other provisions of the Constitution?

STATEMENT

This case involves a petition for review which was filed in the United States Court of Appeals for the Second Circuit by Respondent, Samuel H. Sloan, seeking review of a total of thirty-seven orders of the Securities and Ex-

change Commission ("S.E.C."), purportedly issued pursuant to the Securities Exchange Act of 1934 ("Securities Exchange Act"), each of which suspended trading in all securities of Canadian Javelin Ltd. for a ten-day period. Since these orders were issued successively, their total effect was to suspend trading in the securities of Canadian Javelin Ltd. for a continuous period from 3:45 p.m. EDT on April 29, 1975 through May 2, 1976 (App. 11, 110). This was not the first time trading in Canadian Javelin Ltd. had been suspended by the S.E.C. for successive ten-day periods. Prior successive ten-day trading suspension orders had suspended trading in Canadian Javelin Ltd. from March 17, 1971 until April 5, 1971,[1] from March 7, 1972 until August 9, 1972,[2] and from November 29, 1973 until January 26, 1975.[3]

Respondent in this case was a registered broker-dealer in securities from May 10, 1970, when his broker-dealer registration became effective, until April 28, 1975, when his broker-dealer registration was revoked by the S.E.C. and he was barred from being associated with any broker or dealer. During that time, Respondent did business

1. See Securities Exchange Act Release No. 9111 (March 17, 1971); Securities Exchange Act Release No. 9124 (March 30, 1971).

2. See Securities Exchange Act Release No. 9528 (March 7, 1972); Securities Exchange Act Release No. 9715 (August 3, 1972).

3. See Securities Exchange Act Release No. 10534, 3 SEC Docket 154 (November 29, 1973); Securities Exchange Act Release No. 11172, 6 SEC Docket 53 (January 9, 1975); Securities Exchange Act Release No. 11178, 6 SEC Docket 78 (January 13, 1975); Securities Exchange Act Release No. 11197, 6 SEC Docket 145 (January 22, 1975). The last of the suspensions is regarded by the S.E.C. as two separate suspensions, the first beginning on November 29, 1973 and ending on January 12, 1975 and the second beginning on January 13, 1975 and ending on January 26, 1975 (See App. 189). This second suspension occurred at the request of Canadian Javelin Ltd., which filed a motion in the United States District Court for the Southern District of New York to enjoin the S.E.C. from lifting its trading suspension..

under the name of Samuel H. Sloan & Co.[4]

During the period in which he was a registered broker-dealer in securities, Respondent's principal and virtually exclusive activity was that of market marker in over-the-counter securities. Respondent at one time or another made a market in approximately one thousand securities, one of them being Canadian Javelin Ltd. Respondent traded heavily in the securities of Canadian Javelin Ltd. and was generally a short-seller, a circumstance which ultimately led to extensive litigation.[5] At

4. Samuel H. Sloan & Co. was originally formed as a partnership consisting of two partners. On January 11, 1971, the other partner in this partnership, Harry G. Theodos, withdrew. Respondent immediately thereafter filed an amendment to his broker-dealer registration to reflect the withdrawal of Theodos from the partnership. This amendment was rejected by the S.E.C. Numerous subsequent attempts were made to file an application or amendment reflecting the withdrawal of Theodos from the partnership and to remove the words "& Co." from the name of Samuel H. Sloan & Co., all of which were arbitrarily rejected by the S.E.C., the reason given being that Samuel H. Sloan & Co. was then the subject of investigative proceedings. From September 17, 1973 until April 28, 1975, the S.E.C. refused to allow the withdrawal of the broker-dealer registration of Samuel H. Sloan & Co. for the same reason. Thus, Samuel H. Sloan & Co. was at all times listed on the records of the S.E.C. as a partnership although, in fact, for most of the time in which it was a registered broker-dealer it was a sole proprietorship. Subsequent to April 28, 1975, at the insistence of Harry G. Theodos who by that time had formed his own broker-dealer firm by the name of H. G. Theodos, the S.E.C. agreed to note on its records that Theodos was no longer a partner in Samuel H. Sloan & Co. Although Samuel H. Sloan & Co. was the name listed on the official records of the S.E.C., Respondent, to the extent possible, did business under his own personal name. For example, reference works such as *Securities Dealers of North America*, published by Standard & Poor's Corp., has always listed Samuel H. Sloan under his personal name rather than under the name of Samuel H. Sloan & Co.

5. See *Sloan v. Canadian Javelin Ltd.*, CCH Fed. Sec. Law Rep. ¶ 94, 579 [1973-1974 transfer binder] (S.D.N.Y. 1974), *aff'd* 538 F. 2d 313 (2d Cir. 1976), *cert. denied* 429 U.S. 835 (1976); *S.E.C. v. Canadian Javelin Ltd.*, 64 F.R.D. 648 (S.D.N.Y., 1974), *appeal dismissed* 538 F. 2d 313 (2d Cir. 1976), *cert. denied sub nom. Sloan v. S.E.C.*, 429 U.S. 1023 (1976); *Bonime v. Doyle*, 416 F. Supp. 1372 (S.D.N.Y., 1976), *aff'd* 556 F. 2d 554 (2d Cir. 1977),

the end of all this Respondent wound up holding 13 Canadian Javelin Ltd. shares, which he continues to own to this day.

The controversy which is presently before this Court grew out of a series of suits and countersuits and related administrative proceedings which, at their outset, had nothing to do with trading by Respondent in shares of Canadian Javelin Ltd.[6] On January 11, 1971, Respondent requested from the S.E.C. an extention of time to file his

cert. denied sub nom Sloan v. Bonime, —U.S.— (1977). In the latter case there is presently on file in the United States District Court for the Southern District of New York a proof of claim and supporting documentation consisting of brokers' purchase-and-sale confirmations showing that from the beginning of 1973 until the S.E.C. trading suspension which commenced on November 29, 1973, Respondent sold and purchased 46,810 shares of Canadian Javelin Ltd. This proof of claim also shows that Respondent lost $123,642.51, exclusive of brokerage commissions, as a result. Respondent has been characterized by counsel for Canadian Javelin Ltd. as the largest seller of Canadian Javelin Ltd. stock in 1973, with the exception of the government of Newfoundland.

6. The fact that all of the various court proceedings involving Petitioner and Respondent are inter-related is not in dispute. For example, pp. 2-3 and footnote 1 of the brief filed by the S.E.C. in the court of appeals in *S.E.C. v. Sloan*, Dkt. No. 74-1436, an appeal from the decision reported as *S.E.C. v. Sloan*, 369 F. Supp. 996 (SDNY, 1974), stated the following:

> "This action is the seminal case in a web of litigation involving Mr. Sloan and the Securities and Exchange Commission.[1] Despite the array of proceedings spawned by this initial enforcement action taken by the Commission against Mr. Sloan and despite the profusion of legal theories propounded by Mr. Sloan in an endless stream of motions made before this Court and before various district judges of the Southern District of New York, the substance of the case at bar could not be more routine. Investigators in the Commission's New York Regional Office, after examinations of the books and records of Samuel H. Sloan & Co., then a registered broker-dealer operated by Mr. Sloan as a sole proprietorship, observed that the firm's books and records were not maintained in accordance with the Commission's regulations and, further, that the firm was not in compliance with the Commission's net capital requirements for broker-dealers. Accordingly, the Commission instituted this injunctive action in the United States District Court for the Southern District of New York.

required X-17A-5 report. Commencing the next day and continuing until February 4, 1971, a single S.E.C. staff investigator, Arthur L. Bruder, made several visits to the office of Respondent and reported back to his superiors that at various times Respondent's books and records were "not properly maintained" and that according to Bruder's calculations Respondent had less than the capital required by the S.E.C. net capital rule.[7] On February 4, 1971, without sending a second investigator to confirm Bruder's findings, an S.E.C. staff attorney issued an "order of in-

1. In addition to this appeal, Mr. Sloan and the Commission are adversaries before this Court in four other matters: *Securities and Exchange Commission v. Samuel H. Sloan, individually and d/b/a Samuel H. Sloan & Co.*, No. 75-7056 (appeal from a subsequent preliminary injunction); *Securities and Exchange Commission v. Canadian Javelin, Ltd., et al.*, No. 75-7046 (Mr. Sloan's application for intervention to assert a claim for damages); *Samuel H. Sloan v. Securities and Exchange Commission, et al.*, No. 75-7283 (appeal by Mr. Sloan from dismissal of his suit against the Commission and others seeking declaratory, injunctive and damage relief); *Samuel H. Sloan v. Securities and Exchange Commission*, No. 75-4087 (Mr. Sloan's petition for review of the Commission's order barring him from association with any broker-dealer and revoking the broker-dealer registration of Sloan & Co.). A fifth proceeding *Samuel H. Sloan v. Securities and Exchange Commission*, No. 74-2457 (Mr. Sloan's petition for review of a series of trading suspensions) was dismissed without prejudice on October 15, 1975."

7. Internal S.E.C. memoranda obtained in April 1977 by Respondent pursuant to the Freedom of Information Act state that on February 4, 1977, the date of Bruder's last visit to Respondent's office, Bruder determined that Respondent's records were up to date and his capital was in compliance with the S.E.C. net capital rule. This fact was not made known to Judge Ward, who, in his decision reported at 369 F. Supp. 996, 998 ¶ 9, "found" that Bruder observed further record-keeping violations on February 25, 1971 when, in fact, the memoranda of the S.E.C. show that Bruder did not examine Respondent's books and records on that date. Nor, apparently, was this fact revealed to the S.E.C. commissioners who adopted this finding in their decision to bar Respondent for life from being associated with any broker or dealer. See *Samuel H. Sloan*, Securities Exchange Act Release No. 11376, 6 SEC Docket 772, 774 (April 28, 1975).

vestigation," and on February 16, 1971, the Division of Enforcement of the New York Regional Office of the S.E.C. requested authorization by the Commission to commence an injunctive suit against Respondent. This request was denied on April 20, 1971 but the S.E.C. instructed the Division of Enforcement to "warn" Respondent of the "violations." However, the Division of Enforcement did not warn Respondent in writing of the violations but instead on May 14, 1971 went back to the Commission with an urgent request that it reconsider its decision and strongly implied that Respondent had misappropriated $156,000 in cash and securities from another person.[8] Based upon this representation, the Commission

8. The initial memorandum of the S.E.C. requesting permission to institute an injunctive action, the April 20, 1971 memorandum denying this request, and the May 14, 1971 memorandum requesting the S.E.C. to reconsider its decision based upon new facts are included as exhibits A, B and C of document No. 150 of the record transmitted to this Court by the court of appeals Document No. 150 was a motion to stay the order of the S.E.C. pending certiorari. The S.E.C. did not respond to this motion. The figure of $156,000 actually represented the gross dollar value of transactions in the months of February, March and April, 1971 between Respondent and Joseph F. Iny, a securities representative of the New York Stock Exchange member form of Granger & Co., primarily in the shares of Kaiser Steel Corp. Respondent and Iny had engaged in transactions in securities on a "delivery versus payment" basis and Iny had expressed a desire to become partners with Respondent. This relationship terminated in April, 1971, a fact known to the S.E.C. staff because it took Iny's deposition in April, 1971, but not revealed to the S.E.C. in its May 14, 1971 memorandum. Due to the nature of the relationship, Respondent was never in a position where he had the power to misappropriate cash and securities in the amounts suggested by the S.E.C. Division of Enforcement and there was no factual basis for the claim that he had done so. The claim that Respondent had "misappropriated" cash and securities belonging to Iny was also made in court in papers filed on June 17, 1971, in support of a request for a temporary restraining order but was thereafter abandoned. This allegation was useful to the Division of Enforcement in obtaining permission to institute suit against Respondent and in obtaining a temporary restraining order. The memorandum requesting authorization to commence suit also stated that Respondent had failed to disclose on his books certain transactions with an individual by the name of Zia Marashi. Mr. Marashi, however, was a broker-dealer doing business under the name Zimar Company.

gave the Division of Enforcement authorization to commence an injunctive suit. This suit was filed in the United States District court for the Southern District of New York on June 17, 1971. Simultaneous with its commencement of suit, the S.E.C. filed a request for a temporary restraining order and stated that this request was necessary in view of the failure of Respondent to provide the S.E.C. with a copy of his April, 1971 trial balance and the fact that Respondent had misappropriated $156,000 in cash and securities belonging to another. The S.E.C. also requested the appointment of a temporary receiver. At a conference in Judge McLean's chambers, Respondent consented to the temporary restraining order on condition that he be permitted to consummate all existing contractual commitments. This provision was incorporated in the terms of the temporary restraining order which was signed by Judge McLean on June 21, 1971. However, immediately upon leaving Judge McLean's chambers the attorneys for the S.E.C. violated this agreement by seizing Respondent's bank account, thereby causing Respondent to bounce approximately 40 checks totaling approximately $80,000 which had been written to various broker-dealers in settlement of securities trades. On June 23, 1971, Respondent and his counsel met with the attorneys for the

All transactions with Zimar Company were properly recorded on Respondent's books, a fact which the Division of Enforcement did not see fit to mention in its request for permission to institute suit. No claim of impropriety by Respondent in his dealings with Mr. Marashi was ever made in any court or administrative proceeding but again had this claim not been made in the May 14, 1971 memorandum, the S.E.C. probably would not have given its staff authorization to institute suit. Similarly, the earlier memorandum requesting authorization to institute suit stated that on November 24, 1970 Respondent was notified that his request for an extension of time to file his X-17A-5 report was denied. In fact, Respondent was never given such notification and believed, until he received the memorandum in April, 1977, that this request had been granted. An examination of the material obtained under the Freedom of Information Act shows that no order denying this request, as required by S.E.C. rules, was ever issued or mailed to Respondent.

S.E.C. in Judge McLean's court and at that time the S.E.C. offered to return the money which had been seized from Respondent's bank account and to abandon its request for a temporary receiver and all other claims against Respondent and to permit Respondent to return to doing an active business as a securities broker-dealer provided that Respondent would "consent" to a permanent injunction. After a lengthy colloquy, Respondent refused to consent to a permanent injunction but agreed to consent to a preliminary injunction with the understanding that he would get his money back and have the opportunity to be vindicated at a trial on the merits. The S.E.C. staff agreed to this and the preliminary injunction was formally entered on June 24, 1971.

In the ensuing months, the S.E.C. enforcement staff made repeated requests that Respondent consent to a permanent injunction in order to spare the Division of Enforcement the effort and expense of having to bring its case to trial. Eventually, the S.E.C. staff advised Respondent that if he did not consent to a permanent injunction, an administrative proceeding would be brought against him. Respondent refused at all times to consent to an injunction and the threatened administrative proceeding was, in fact, commenced on April 25, 1972. The Division of Enforcement then offered to settle the administrative proceeding with a suspension of sixty days provided, again, that Respondent would consent to a permanent injunction. Although Respondent did not object to the sixty-day suspension he continued to refuse to consent to an injunction, as a result of which no settlement agreement was ever reached.

An administrative hearing was scheduled and, after several postponements by the S.E.C., the hearing was actually conducted from October 30, 1972 until November 1, 1972. An initial decision was filed by an administrative law

judge on April 24, 1973 and that decision was appealed to the Commission where the matter remained pending for the next two years. Meanwhile, the injunctive suit which had been filed in the district court had been assigned to Judge Ward, upon the death of Judge McLean, and in early 1973 Judge Ward became impatient with the length of time that case had been sitting dormant on his calendar and scheduled a pre-trial conference where he directed the parties to proceed with discovery and prepare the case for trial. There were no discovery proceedings by either side and, after a period of time had passed, Judge Ward directed the parties to be prepared to go to trial on December 10, 1973. The trial actually commenced on December 11, 1973 and continued until December 22, 1973, following which Judge Ward on January 7, 1974 made a decision in favor of the S.E.C. An injunction was entered on January 18, 1973, even before the court reporter had completed making a transcript. Judge Ward's decision is reported as *S.E.C. v. Sloan*, 369 F. Supp. 996 (S.D.N.Y. 1974).

On June 27, 1974, with an appeal from Judge Ward's decision pending in the United States Court of Appeals for the Second Circuit and an appeal from the decision of the administrative law judge pending before the S.E.C., and no sign of a decision in either case being immediately forthcoming, Respondent commenced suit against the S.E.C. The original complaint filed in that suit alleged that the S.E.C. had acted arbitrarily, illegally, unconstitutionally, and without just cause in suspending trading in a number of securities owned by Respondent, one of them being Canadian Javelin Ltd. The complaint also alleged that the S.E.C. had acted illegally and improperly in its application of Rule 15c2-11 by refusing to permit the resumption of quotations in the pink sheets published by the National Quotation Bureau, Inc. of securities which had previously

been suspended by the S.E.C. and that Rule 15c2-11 was constitutionally invalid. The S.E.C. answered with a number of affirmative defenses, some of which were pleaded and others of which were set forth in a conference before Judge Griesa, to whom the case had been assigned. The S.E.C. contended, (1) that the S.E.C. cannot be sued in its own name, (2) that the suit as it pertains to the submission of quotations after a trading suspension had been terminated was more properly brought against the National Quotation Bureau, Inc. since it was the National Quotation Bureau and not the S.E.C. that was refusing to publish quotations for these securities in the pink sheets, (3) that Respondent's sole remedy with respect to his claims regarding Rule 15c2-11 was to violate the rule and wait for the Commission to institute enforcement proceedings, and (4) that Respondent's exclusive remedy with regard to the trading suspension orders was to file a petition for review in a United States Court of Appeals. The S.E.C. also claimed that Respondent lacked standing to sue and that most of his claims with regard to the impropriety of trading suspension orders had become moot since, with the exception of Canadian Javelin Ltd., the suspension of trading in all of the securities set forth by Respondent in the complaint had expired. At a conference in chambers, after reading the complaint and hearing the arguments of the S.E.C., Judge Griesa directed Respondent to file an amended complaint setting forth facts in greater detail concerning the trading suspension orders issued by the S.E.C., the manner in which Respondent has sustained injury as a result of these suspensions, and other matters. The amended complaint which Respondent thereafter filed set forth in detail 28 securities which had been suspended by the S.E.C. and which suspensions had adversely affected Respondent in that Respondent had either been a stockholder or a market maker or a short-seller prior to the trading suspension. In addition, the

amended complaint alleged that as a result of the trading suspension in Triex International Corp. plus a retroactive application by the S.E.C. of Securities Exchange Act Release No. 10209 (June 8, 1973), which required broker-dealers to deduct "fails to deliver" in suspended securities from their net capital, the S.E.C. had found Respondent to be in violation of the net capital rule retroactively to May 24, 1973 due to the fact that Respondent had been a short seller of Triex International Corp. and had $11,000 in fails to deliver in that security. The amended complaint also joined as additional parties the National Quotation Bureau, Inc., publisher of the pink sheets, and the owner and operator of another inter-dealer quotation system known as NASDAQ and alleged violations of antitrust law as well as violations of the Securities Exchange Act and the Constitution. That suit was ultimately dismissed by the district court and this dismissal was affirmed by the court of appeals, which characterized the suit as "frivolous." See *Sloan v. S.E.C.*, 535 F. 2d 676 (2d Cir. 1976), *cert. denied* 429 U.S. 885 (1976).[9]

A further outgrowth of the affirmative defenses set forth by the S.E.C. was two other actions taken by Respondent. The first was a petition for review filed by Respondent in the United States Court of Appeals for the Second Circuit on November 8, 1974, which sought review of the then current orders suspending trading in Canadian Javelin Ltd., which, as noted previously, was the only security which Respondent owned which continued to be the subject of a current trading suspension order. The second was that in the latter part of December, 1974, Respondent submitted at least 293 applications on Form 211, a form promulgated in accordance with the S.E.C.

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9. That case was filed in this Court under Docket No. 76-58. Page 4, n. 3 of the brief in opposition filed by the S.E.C. states that a copy of the appendix in the court of appeals in that case "is being lodged in this Court." The appendix contains a copy of all pleadings, transcripts, and pertinent court filings.

Rule 15c2-11, requesting permission to resume quotations in various securities which had previously been suspended by the S.E.C. The National Quotation Bureau, in accordance with an agreement it had worked out with the S.E.C. with regard to the filing of Forms 211, forwarded all of these listing applications to the S.E.C., which responded by filing a suit in the district court which requested an injunction on the grounds that Respondent was threatening to violate Rule 15c2-11 and to publish quotations in securities which had previously been suspended by the S.E.C.[10] Rather than file this suit with the clerk of the

10. The complaint filed by the S.E.C. had two counts: one count dealing with listing applications filed for previously suspended securities and the other count dealing with a letter written by Respondent to the S.E.C. dated November 6, 1974, which stated that henceforth Respondent would refuse to show his personal books and records to the S.E.C. and which cited the Fourth Amendment as the basis for his refusal. Memoranda released to Respondent pursuant to the Freedom of Information Act including the memorandum in which the S.E.C. staff requested permission to institute suit make it clear that the decision to sue was actually triggered by the listing applications. Subsequently, however, that aspect of the suit dealing with Respondent's refusal to show his personal books and records to the S.E.C. became more important because the temporary restraining order which Judge Ward signed on December 30, 1974 effectively extinguished Respondent's listing applications and therefore mooted that part of the case. The affidavit of Ira Spindler filed by the S.E.C. in support of its request for a temporary restraining order, stated, in part, the following:

> "7. On December 18, 1974, the NQB, publishers of the Pink Sheets, forwarded to this office applications submitted by Sloan to quote the shares of Franklin New York Corp. ('Franklin') and Triex International Corp. ('Triex'). Each of these issues had been suspended from trading in the over-the-counter market by the Commission. Franklin was suspended for the period May 13, 1974 through October 31, 1974 and Triex for the period December 15, 1972 through December 19, 1973. There apparently is no current financial information available either.
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> 15. Defendant Sloan & Co. and Sloan are and have been in violation of the requirements for initiating over-the-counter quotations of the Exchange Act and Rule promulgated thereunder. Sloan's submission for publication of quotations, for securities for which he does not possess reasonable information under Rule 15c2-11, places the public in jeopardy. Unless defendant Sloan & Co. and Sloan are enjoined, members of the public may become victims of an unscrupulous scheme."

Southern District of New York in the normal manner, where it would have been assigned by lot to a judge in accordance with Rule 4(A) or the Calendar Rules of the Southern District of New York and most likely thereafter would have been reassigned to Judge Griesa before whom the other case was pending and where the S.E.C. had requested several extentions of time and was adopting delaying tactics, the S.E.C. took its complaint directly to Judge Ward's chambers and asked him to take jurisdiction over that case since he had been the judge in the previous case brought by the S.E.C. against Respondent. Judge Ward agreed to do so and the same day signed a temporary restraining order. Subsequent attempts by Respondent to disqualify Judge Ward on the grounds of bias and prejudice and on the grounds that this case had not been properly assigned in accordance with the Calendar Rules of the Southern District of New York proved unsuccessful. After Judge Ward signed the temporary restraining order, he entered a preliminary injunction on January 14, 1975, without an evidentiary hearing, and subsequently found Respondent to be in "civil contempt" for failing to produce his books and records in a place "easily accessible" to the S.E.C., as a result of which the United States Court of Appeals for the Second Circuit dismissed three appeals which had been taken by Respondent from injunctions obtained by the S.E.C. *See S.E.C. v. Sloan*, 538 F. 2d 313 (2d Cir. 1976), *cert. denied* 429 U.S. 1023 (1976). Although no reason was given by the court of appeals for that decision it appears from the case which the court cited that it determined *sua sponte* that Respondent was a "fugitive from justice" in view of his continuing to be held in civil contempt for failure to make his books and records easily accessible to the S.E.C.[11]

11. Assuming that was, in fact, the basis for the decision of the court of appeals, and the Solicitor General claimed it was in a brief filed in this Court in opposition to the Petition for Writ of Certiorari in *Sloan v. S.E.C.*, No.

Although three appeals which had been filed by Respondent were dismissed *sua sponte* by the court of appeals, a number of other appeals which were also pending during the period in which Judge Ward had adjudged Respondent to be in "civil contempt" were unaffected. One of these was the petition for review of the orders suspending trading in Canadian Javelin Ltd. which, as noted previously, was filed on November 8, 1974. That appeal was decided on October 15, 1975, at a time when Respondent was just as much in contempt of court as he was on January 6, 1976, when a different panel of judges dismissed three other appeals. The decision of the court of appeals is reported as *Sloan v. S.E.C.*, 527 F. 2d 11 (2d Cir. 1975), *cert. denied* 426 U.S. 935 (1976). Why the court of appeals summarily dismissed three appeals on January 6, 1976 and yet made a decision on another appeal on October 15, 1975 and allowed four other appeals to remain on the calendar unaffected has never been explained.

At the time of the decision of the court of appeals dated October 15, 1975, the orders suspending trading in Canadian Javelin Ltd. which the petition dated November 8, 1974 ask to be reviewed, had long since expired. Those orders had been superseded by subsequent orders which had the effect of continuing the trading suspension until January 26, 1975. The S.E.C. initially announced that it was going to terminate the trading suspension on January 12, 1975, but at the earnest request of Canadian Javelin Ltd. and a number of its stockholders, the S.E.C. agreed to extend the trading ban until the January 26th date.[12]

76-365, although the S.E.C. did not make this or any other contention in the court of appeals, the decision of that panel of the court of appeals is in conflict with a decision of another judge of that court with regard to what constitutes being a "fugitive from justice." See *United States v. Salzmann*, 548 F. 2d 395, 403 n. 2 (2d Cir. 1976) (Feinberg, J., concurring).

12. These developments are described in the Securities Exchange Releases listed in footnote 3, *supra*.

Canadian Javelin Ltd. even went so far as to file a motion for a temporary restraining order and a preliminary injunction enjoining the S.E.C. from lifting its trading suspension in a suit before Judge MacMahon in the Southern District of New York entitled *S.E.C. v. Canadian Javelin Ltd.*, 73 Civil 5074. After Judge MacMahon signed an order to show cause staying the S.E.C. from lifting its trading suspension and setting the matter down for a hearing, the S.E.C. agreed to extend the trading suspension and Canadian Javelin Ltd. withdrew its motion by stipulation. The reason given in the motion papers filed by Canadian Javelin Ltd. for its request of the extention of the trading suspension was that it needed time to prepare an "orderly market." Ironically, after giving officials of Canadian Javelin Ltd. time to prepare an "orderly market", the S.E.C. subsequently filed an injunctive suit alleging that a market manipulation took place when trading was allowed to resume. See *S.E.C. v. Doyle, et al*, Civil Action No. 76-1882 (S.D.N.Y.).

On February 3, 1975, eight days after the S.E.C. lifted its trading ban it filed in the court of appeals a "suggestion" that the court of appeals dismiss the petition for review of the trading suspension orders filed by Respondent as "moot." This suggestion was not in the form of a formal motion but rather was filed in response to a motion by Respondent for various relief including an order requiring the S.E.C. to file in the court of appeals the original record rather than a certified list. The S.E.C.'s claim that the case was moot was based on the assertion that there was then no order suspending trading in Canadian Javelin Ltd. currently in effect. The court of appeals took no action on the S.E.C.'s "suggestion," although on February 21, 1975 it denied the motion to require the S.E.C. to file the original record, which by that time the S.E.C. had filed anyway.

Subsequently, on April 29, 1975 at 3:45 p.m. EDT, the S.E.C. resuspended trading in Canadian Javelin Ltd. This development forced the S.E.C. to come up with a new argument on the point of mootness. In its brief filed in the court of appeals on the merits, the S.E.C. argued that although there was then in effect an order suspending trading in Canadian Javelin Ltd., that order was not part of the same series of orders which included the orders that the petition for review had challenged. In addition, argued the S.E.C., the reason for the first series of suspension orders was different from the reason for the second series of suspension orders as a result of which the question of the propriety of the first series of suspension orders was moot. The S.E.C. did not, however, offer any evidence showing the reason for the second series of trading suspension orders. Although the brief filed by the S.E.C. devoted considerable attention to its mootness argument, the decision subsequently handed down by the court of appeals did not discuss the question of mootness. However, by dismissing the petition for review "without prejudice", the court of appeals made it clear that it regarded the mootness argument as meritless.

The decision of the court of appeals to dismiss the proceeding "without prejudice" came as a result of a statement made by counsel for the S.E.C. during the course of oral argument to the effect that the S.E.C. was willing to grant Respondent some sort of administrative hearing. This statement constituted a substantial concession at the time because at the outset of the oral argument the first question from the bench was, "What remedy does Mr. Sloan have?" and the reply by counsel for the S.E.C., Michael J. Stewart, Esq., was, "He doesn't have any." This statement precipitated a series of further questions from the panel as a result of which it became apparent that unless the S.E.C. changed its position it was going to be faced with an immediate adverse ruling by the court. This

led counsel for the S.E.C., in effect, to offer Respondent the opportunity for an administrative hearing. Whether the attorney for the S.E.C. was authorized to make this offer is not clear.[13]

Immediately upon receipt of the decision of the court of appeals dated October 15, 1975 Respondent wrote to the S.E.C. and requested the promised administrative hearing. A copy of this request is included as Appendix B to this brief.[14] The Secretary of the S.E.C., George A. Fitzsimmons, Jr., responded with a statement that this letter would not be acted upon because it was not verified or properly formulated. A copy of this response is included as Appendix C to this brief.[15] Respondent thereafter submitted to the S.E.C. a "verified petition for review" in ac-

13. The practice of the United States Court of Appeals for the Second Circuit is to make a tape recording of all oral arguments. These tapes are retained for the convenience of the judges and the parties to the case are not permitted to hear a tape or order a transcript. Dissatisfaction with this state of affairs led Respondent to file in this Court a motion for leave to file apetition for a writ of mandamus. See *Sloan v. Mulligan, mandamus denied* 429 U.S. 1059 (1977). In the case at bar, the result might turn on the contents of these tapes and consequently Respondent hereby requests this Court to ask the court of appeals to transmit the tape of the oral argument described above.

14. The procedure of including documents such as this in the appendix to a brief is admittedly irregular. However, in this case the proceedings before the S.E.C. were not contested in the normal sense and consequently Respondent was not allowed to participate in the decision of what should be included in the record. With the exception of one document, which is a verified petition for review filed by Respondent, the record consists entirely of trading suspension orders issued by the S.E.C. and memoranda requesting their issuance. Thus, the exchange of correspondence between Respondent and the Secretary of the S.E.C., although germane to the issues involved in this case and although referred to in the opinion of the court of appeals (Pet. App. B, p. 10a), are not part of the formal record. They were, however, available to the court of appeals because copies of this correspondence was forwarded to the court of appeals by the parties and included in the file maintained by the court of appeals under Docket No. 74-2457, which was the first petition for review. Thus, Appendix B to this brief is a document which the court of appeals read and relied upon and its inclusion in this brief is not improper since otherwise this Court would not be able to read it.

15. This letter is included in this brief for the same reasons as those given in footnote 14, *supra*.

cordance with the requirements set forth in the letter from George A. Fitzsimmons, Jr. (App. 114-118). The S.E.C. states that this petition was received on March 15, 1976 (App. 120). The S.E.C. did not act on this petition immediately but instead issued four more trading suspension orders and held off a decision so as to coincide with the issuance of the last trading suspension order. That order was issued on April 21, 1976 and suspended trading in Canadian Javelin for ten more days from April 23, 1976 until May 2, 1976 (App. 109-110).

On April 23, 1976, the day Respondent received the April 21, 1976 order and also the first day of the last ten-day trading suspension period, Respondent filed a petition for review in the United States Court of Appeals for the Second Circuit and simultaneously filed a proposed order to show cause and a motion for a stay of the order of the S.E.C., for an expedited review, and for an order requiring the S.E.C. to file the record forthwith (App. 123-127). This motion was not acted upon by the court of appeals. Respondent later learned from Edward Guidaro, the motion clerk for the court of appeals, and from his deputy clerk, Art Heller, that the reason no action was taken on this motion was that an attorney from the Office of General Counsel of the S.E.C. had called them and informed them that trading in Canadian Javelin Ltd. was going to be allowed to resume at the termination of the then current ten-day trading suspension order and that no action should be taken on Respondent's motion for that reason. However, Respondent himself was not informed that the trading suspension would terminate until the S.E.C. publically announced this six days later.[16]

16. See Securities Exchange Release No. 12394, 9 SEC Docket 509 (April 29, 1976). Had Respondent or anyone else learned the plans of the S.E.C. prior to this public announcement, they could have made a substantial profit by buying shares of Canadian Javelin Ltd. on the Vancouver Stock Exchange since the market price, predictably, nearly doubled when the S.E.C. announced that its trading suspension was about to terminate.

Under Rule 17(a) of the Federal Rules of Appellate Procedure, the S.E.C. had 40 days to file the record with the court of appeals. However, the S.E.C. did not file the record but instead filed a certified list on June 4, 1976, two days later than the time permitted by the rule.(The appendix filed by the S.E.C. in this Court includes what is purported to be a docket sheet which contains an entry that on June 4, 1976 "Documents comprising the record" were filed (App. i). In fact, the actual docket sheet in the court of appeals states that on June 4, 1976 a "certified list of documents comprising the record" was filed). A brief was filed by Respondent but the S.E.C. moved for an extension of time to file its answering brief (App. 128). This motion was granted but the court of appeals did not give the full amount of time requested by the S.E.C. The S.E.C. then filed a motion to dismiss the appeal on the ground of mootness and requested that if the motion be denied the court grant a second extension of time to file its brief and that the court adjourn the oral argument, which had by that time been scheduled (App. 129-130). The court of appeals, however, treated the motion in part as a motion for an extension of time and denied that part of the motion and set the motion to dismiss on the grounds of mootness for argument on the same date as the argument of the appeal (App. 131). Thus, the S.E.C. was forced to file a brief, which it did on October 12, 1976, the day before the oral argument and well after the time which had been set by the court for the filing of its brief had expired. The shortness of time between the filing of the S.E.C.'s brief and the date of the oral argument before the court of appeals precluded Respondent from putting in a reply brief.

When the time came for the oral argument of the appeal, the attorney who appeared to argue on behalf of the S.E.C., David Ferber, insisted on sitting at the table on the

left hand side facing the bench so as to go first and argue his motion to dismiss the appeal as moot and asked the court to decide that motion prior to hearing the argument of the appeal. The court, however, denied the request of counsel for the S.E.C. that he be permitted to argue first but allowed him to sit at the table on the left hand side, there being no objection on that point from Respondent. The court then heard argument on the two cases which had been scheduled for argument at that time. The first was Case No. 75-4087, which was an appeal from an order of the S.E.C. revoking Respondent's broker-dealer registration and barring Respondent from being associated with any broker or dealer. The second was Case No. 76-4110, which was a petition for review of a series of 37 consecutive trading suspension orders. Treating these cases as having been consolidated, the court subsequently rendered a decision which is reported as *Sloan v. S.E.C.*, 547 F. 2d 152 (2d Cir. 1976).

On the case concerning the decision of the S.E.C. to revoke Respondent's broker-dealer registration and to bar Respondent from being associated with any broker or dealer, the court apparently did not review the 1,286-page-long record and determine whether or not the findings of the S.E.C. were supported by substantial evidence. Instead, it based its decision on the entry of two injunctions by Judge Ward, one of which had subsequently been vacated when the underlying case was dismissed as moot, the two injunctions being an injunction entered on January 18, 1974 which pertained to record-keeping and net capital violations found to have been committed by Respondent in the years 1971-1973 and a preliminary injunction which had been entered without an evidentiary hearing on January 14, 1975, which enjoined Respondent from publishing quotations in certain securities which had been previously been suspended by the S.E.C. and which

ordered Respondent to produce his books and records for inspection by the S.E.C. in "an easily accessible place." With respect to these two injunctions, the court of appeals said (Pet. App. B, p. 7a):

> "Each of these injunctions was in itself a sufficient ground to support the revocation of Sloan's broker-dealer license under §15(b)(5)(c)of the 1934 Act."

With respect to the case which sought review of a series of 37 consecutive trading suspension orders, the court rejected the S.E.C.'s contention that the case had become moot with the expiration of the last order and decided that all but the first of these orders had been issued illegally. The court therefore vacated all but the first order. After determining that the practice followed by the S.E.C. was illegal and that all but the first order should be vacated, the court of appeals stated (Pet. App. B, p. 17a):

> "The S.E.C. is, therefore, directed to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading in a security for an extended period, i.e. in excess of 10 days.
>
> Is is so ordered."

Both sides petitioned for a rehearing and suggested that the rehearing be en banc. Due to the objections by the S.E.C. to certain language in the decision, the court of appeals struck certain passages as "not necessary to the decision in the case" and modified the decision accordingly (Pet. App. B, p. 20a). Otherwise, the petitions for rehearing and suggestions that the rehearing be en banc were denied. Both sides then petitioned this Court for certiorari. The petition for certiorari filed by Respondent was denied but the petition for certiorari filed by the S.E.C. was granted. A subsequent petition for rehearing filed by Respondent was also denied.

SUMMARY OF ARGUMENT

The court of appeals had the authority to enjoin future successive trading suspension orders. This case is not moot as to Respondent whether viewed narrowly in his capacity as a stockholder of Canadian Javelin Ltd. or viewed in Respondent's capacity as an investor generally, or viewed in Respondent's capacity as a frustrated short-seller, or even viewed in Respondent's capacity as a former market maker and broker-dealer in securities specializing in trading in shares of Canadian Javelin Ltd. The harm to a person in the position of Respondent would clearly be one which is "capable of repetition, yet evading review" and Respondent would be without remedies were this case to be declared moot. Even were that not true, the S.E.C.'s delaying tactics precluded review of the trading suspension orders while they were in effect and the S.E.C. should not be permitted to benefit from its own delays. Moreover, the arguments presented by the S.E.C. in this Court on the subject of mootness are totally different and alien from the arguments presented by the S.E.C. to the court of appeals and the S.E.C., in its position as a defeated party, is barred from asserting new arguments in this Court which it did not assert in the court of appeals. Moreover, assuming *arguendo* that this case is moot, that would not entitle the S.E.C. to the relief it is seeking, which is a vacatur of the decision and order of the court of appeals. Rather, the petition would be dismissed and the decision of the court of appeals would stand as a declaratory judgment barring the S.E.C. from resuming its practice of issuing successive ten-day trading suspension orders.

The contentions of the S.E.C.. regarding statutory construction must be rejected. The principles cited by the S.E.C. regarding statutory construction only apply when the statute itself is ambiguous, which is not the case here

since the statute expressly limits the authority of the S.E.C. to suspending trading in a security "for a period not exceeding ten days." Most of the cases cited by the S.E.C. deal with the deference which must be given to the agency's construction of its own rules. The "administrative deference rule" only applies when the administrative agency has issued binding, consistant, official interpretations of the statute over a long period of time which has not occurred here. The S.E.C. has never issued a formal opinion explaining the legal basis for its practice of issuing successive trading suspension orders and this Court is not permitted to accept the rationalization by appellate counsel for the S.E.C.'s actions. None of the cases cited by the S.E.C. stand for the proposition that an agency can expand its own jurisdiction as the S.E.C. has attempted to do here. Even the S.E.C. does not contend that when Congress passed the Securities Exchange Act in 1934 and incorporated the trading suspension power therein, it intended to give the S.E.C. the power to suspend trading in a security for an indefinite time period. The statute, when read as a whole, makes it clear that the determination by the court of appeals of the intent of Congress is correct and it is apparent that when it created the trading suspension power Congress omitted the notice and hearing requirements found in analogous sections of the Securities Exchange Act because it intended the summary trading suspension power to be an emergency power to be used only for periods of short duration, i.e. ten days or less. The S.E.C.'s claim that it is necessary to have the power to suspend trading for an extended period is appropriately addressed to Congress and not to the courts.

The record of this case establishes that the S.E.C. abused its authority and acted with improper motives and that the suspension of trading for a period of more than one year did not serve the public interest and only served the interests of the S.E.C. Assuming *arguendo* that there

exist circumstances under which the S.E.C. may legally follow a ten-day trading suspension order with another ten-day trading suspension order, these circumstances were not present in this case. The record of this case establishes that the orders of the S.E.C. were not supported by substantial evidence or, for that matter, any evidence at all. Thus, even if there is some merit to the contentions advanced by the S.E.C., the court of appeals acted correctly in vacating the trading suspension orders which are the subject of this case.

Finally, notwithstanding the above, assuming *arguendo* that the exercise of the trading suspension power in this case was valid on statutory and evidentiary grounds, the issuance of successive ten-day trading suspension orders so as to suspend trading in a security for an indefinite time period is unconstitutional. For that matter, even a single summary trading suspension order without notice or a hearing violates the Constitution. The trading suspension power is an unconstitutional delegation of legislative power because Congress has provided no standards to the administrative agency and because Congress may not delegate to an administrative agency the broad authority to decide what is in the "public interest" and "for the protection of investors" without standards on which to base that decision. No important governmental interest is served by a securities trading suspension, particularly by the trading suspensions which are the subject of this case, and the interference with property rights which a trading suspension entails without notice and the opportunity for a hearing is unconstitutional. In addition, the exercise of the summary trading suspension power is unconstitutional as being arbitrary and capricious.

ARGUMENT

I

THE COURT OF APPEALS HAD THE AUTHORITY TO VACATE PAST TRADING SUSPENSION ORDERS AND TO ENJOIN FUTURE SUCCESSIVE TRADING SUSPENSION ORDERS

The order of this Court granting certiorari specifically requested the parties to brief and argue the question of the possibility of mootness (App. 213) and for that reason the bulk of the argument in this brief will be devoted to that question. However, the reply brief filed by the S.E.C. in support of the petition for a writ of certiorari raised a question of such fundamental importance that it should be addressed first. That reply brief stated (pp. 1-2):

> "This case arose on petition for review of a series of 10-day suspension orders issued by the Commission (Pet. App. B, p. 8a). On petition for review of an order of the Commission, the reviewing court's jurisdiction is limited to the power 'to affirm or modify and enforce or to set aside the order ***.' Section 25(a)(3) of the Act, 48 Stat. 902, as amended, 15 U.S.C. (Supp. V) 78y(a)(3). The court of appeals, however, did not limit its relief to the orders before it. Instead, the court in its opinion 'directed (the Commission) to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading in a security for an extended period, i.e., in excess of ten days' and concluded '(i)t is so ordered' (Pet. App. B, p. 17a).

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1. The judgment could not have been intended merely to set aside particular suspension orders, for the series of such orders that respondent challenged had terminated even before oral argument was heard (see Pet. 11)."

Essentially, the contention of the S.E.C. is that the decision and order of the court of appeals was unlawful in that it exceeded authorized judicial power. It should be noted that the S.E.C. did not make this claim in the petition for rehearing and suggestion that the rehearing be en banc it filed in the court of appeals nor did it make this claim in the petition for a writ of certiorari or in its brief on the merits. Thus, it seems possible that the decision to raise this argument was hastily made and has since been reversed.[17] Nevertheless, this argument raises questions of such importance that it must be addressed.

The S.E.C. misreads, or, to put it more accurately, misrepresents § 25(a)(3) of the Securities Exchange Act when it states that this section limits the jurisdiction of the court of appeals to the power to affirm, modify, enforce or set aside the order. Nowhere in §25(a)(3) is the word "limit" or any equivalent term to be found. It is true that §25(a)(3) does not specifically authorize a court of appeals to enjoin future orders, but it need not do so, because that authority is provided in other sections of the United States Code and in the inherent equitable power of the courts.

For example, the All Writs Act, 28 U.S.C. §1651(a), provides that, "all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions." The application of this statute to the instant case is clear. The court of appeals found that the practice of the S.E.C. of issuing consecutive summary trading suspension orders was illegal. It also found that the harm to Respondent was one "capable of repetition, yet evading review." Faced with this situation, it had no

17. Indeed, were the S.E.C. to prevail on this claim, its so-called "enforcement program" wherein it often seeks what is called "ancillary relief" not specifically authorized by the Securities Exchange Act, cf. *S.E.C. v. General Host Corp.*, 438 F. Supp. 105, 109 (S.D.N.Y. 1977) (a request that a district court order the donation of certain funds to charity), might suffer a severe setback.

choice but to issue a judgment which would prevent the illegal activities of the S.E.C. from recurring. This judgment was "necessary in aid of" the jurisdiction of the court of appeals. Had the court of appeals stopped short of what it did and merely vacated the by then expired trading suspension orders, the S.E.C. could simply have started a new series of trading suspension orders, and had Respondent successfully challenged that series of orders, it could have started yet another series and so on. Thus, if the S.E.C. were correct that a court of appeals lacks the power to enjoin future successive trading suspension orders, the result would be that the courts would be powerless to halt a clearly illegal practice.

The authority of the court of appeals to act as it did can also be found in the Declaratory Judgment Act, 28 U.S.C. §2201. This statute provides, "In case of actual controversy within its jurisdiction . . . any court of the United States may declare the rights and other legal relations of any party seeking such declaration. . . . Any such declaration shall have the force and effect of a final judgment . . . ." In its opinion, the court of appeals stated (Pet. App. B, pp. 16a-17a):

> "We declare that the successive roll-over ten-day suspension procedure erroneously adopted by the S.E.C. was improperly pursued and was contrary to the statutory provisions for summary suspensions in force April 30, 1975 to May 2, 1976."

This statement had the effect of a declaratory judgment. In that section of its brief dealing with mootness, the S.E.C. contends that the court of appeals lacked jurisdiction to make this statement. However, the court of appeals merely declared the rights and legal relations of the parties, something it was empowered by statute to do.

The authority of the court of appeals to do what it did may be found in other statutory provisions as well, such as §703 of the Administrative Procedure Act, 5 U.S.C. §703,

and even §21(e) of the Securities Exchange Act, 15 U.S.C. §78 *u*(e). In the latter case, it has been established through *J.I. Case Co. v. Borak,* 377 U.S. 426, 432 (1964) that a private litigant, as well as the S.E.C., can sue for equitable relief under this section. Moreover, §3(a)(9) of the Securities Exchange Act, 15 U.S.C. §78*c*(a)(9), defines a "person" as "a natural person, company, government, or political subdivision, agency, or instrumentality of a government." Since the S.E.C. is a government agency and therefore a person as defined by the Securities Exchange Act and since §21(d), 15 U.S.C. §78*u*(d), authorizes the bringing of injunctive suits against "persons" for violations of the Securities Exchange Act, in this case the violation being the suspension of trading in a security for a period exceeding ten days in violation of §12(k) of the Act, it follows that the S.E.C. can be enjoined from threatened future conduct under §21(d) and §21(e) of the Securities Exchange Act.

When the S.E.C. argues that the court of appeals lacked jurisdiction to vacate past consecutive trading suspension orders and at the same time the court of appeals lacked the power to enjoin future consecutive trading suspension orders, what it is really saying is that the question of whether or not it is legal for the S.E.C. to issue consecutive trading suspension orders is of no moment because in any event the courts are powerless to do anything about it or even to make a declaration as to whether the practice is legal. It is submitted that this claim must be rejected.[18]

18. It must be remembered that the other possible remedy available to Respondent, namely a suit against the S.E.C. for declaratory and injunctive relief and money damages was already tried and there the S.E.C. prevailed as the result of a number of arguments, one of them being that Respondent's "exclusive remedy" if he felt aggrieved by a trading suspension order was to file a petition for review in a court of appeals.

II

THIS CASE IS NOT MOOT

A

When this case was argued in the court of appeals and the attorney for the S.E.C. stood up and commenced his argument that this case was moot, Judge Gurfein asked, "But isn't this just like the old Southern Pacific Terminal case?" The attorney for the S.E.C. was unable to respond to the question. In this Court as well, the S.E.C. does not respond to the statement made in the decision of the court of appeals, which said (Pet. App. B, p. 16a):

> "Because of the S.E.C.'s continuing policy of rollover ten-day suspension orders, the harm to him was 'capable of repetition yet evading review.' *Southern Pacific Terminal Company v. ICC,* 219 U.S. 498 (1911)."

Neither the petition for a writ of certiorari nor the brief for the S.E.C. on the merits cite or make any reference to the authoritative *Southern Pacific Terminal* decision where this Court stated that "short term orders, capable of repetition, yet evading review" would not be declared moot. 219 U.S. at 515. Instead, the S.E.C. discusses other decisions cited by the court of appeals such as *Sosna v. Iowa,* 419 U.S. 393 (1975) which, it says, is distinguishable because that was a class action. The S.E.C. also studiously avoids another decision of this Court more recent than any of the cases it cites, namely *Nebraska Press Association v. Stuart,* 417 U.S. 539, 546-547 (1976), which is contrary to the position of the S.E.C. Returning to Judge Gurfein's remark that this case is "just like the old Southern Pacific Terminal case", it can be seen that the facts of this case are far more similar to the facts of that case than any of the intervening cases cited by the S.E.C. of the point of mootness. This is not surprising

since the petitioner in the instant case assumed many of the powers of the type vested in the Interstate Commerce Commission, which issued the "short term orders" which were the subject of that case. There, the Interstate Commerce Commission issued numerous short term orders which expired by their terms before judicial review could be obtained and, consequently, these orders would have been unreviewable had any attempt to seek review been declared moot upon expiration of the order. Hence, this Court declared in that case that attempts to seek review of "short term orders, capable of repetition, yet evading review" would not be declared moot and that decision clearly controls here. Ergo, this case is not moot.

The case presented here is even less susceptible to a mootness argument than *Southern Pacific Terminal v. ICC*. There, the order being challenged had a life span of two years. Here, the orders being challenged had each a duration of only ten days. In other respects, the cases are quite similar. There, this Court noted that although the government was contending that the case was moot, the government was not like a private litigant which can settle a controversy at any time, because it has no power "as a substantial trustee for the public under the act of Congress" to extinguish the rights of the public. 211 U.S. at 516. It also said that "the object of the suit is to have declared illegal an order of the Interstate Commerce Commission [and that] the defendants should be enjoined for the future" from issuing such orders and this "broader consideration" defeated any claim that the case was moot. 211 U.S. at 515. The instant case was instituted for the same reason and is thus indistinguishable from *Southern Pacific Terminal v. ICC* and cannot be declared moot. Of course, the S.E.C. neatly avoids this problem by not even mentioning *Southern Pacific Terminal* in its entire brief, although purporting to brief and argue the question of mootness.

B

As this case has wended its way through various court proceedings, the S.E.C. has concocted a variety of arguments which seem to be designed to confuse the issue in order to avoid the irrefutable logic set forth above. In this Court, for example, on page 19, note 9, of its brief, the S.E.C. proffers a mathematical formula which it claims supports its conclusion that this case is moot. This formula was not presented to the court below nor were any of the arguments made on pages 17-19 of the S.E.C.'s brief made previously. It is a well established judicial rule that a defeated litigant may not present to an appellate court arguments which were not presented to the court below and the S.E.C. has violated that rule here. Conversely, the prevailing litigant is allowed to present to an appellate court arguments which he did not make previously. However, in this case, Respondent, unlike the S.E.C., is entirely satisfied with the arguments he made in the court below and therefore will not present new arguments here. Since the S.E.C. is bound by the arguments it presented to the lower court, it is appropriate to look at the arguments the S.E.C. made there and see how they contrast and conflict with the arguments the S.E.C. now presents to this Court.

As noted previously, the first proceeding instituted by Respondent to challenge the validity of S.E.C. trading suspension orders was a suit filed in the United States District Court for the Southern District of New York on June 27, 1974. The complaint in that action complained of trading suspensions in a total of nine different securities.[19] The securities in question were Old Town Corp. common,

19. As noted in footnote 9, *supra*, the appendix in the court of appeals to that case was lodged in this Court by the office of the Solicitor General. If it is still here, the pleadings are thus available to this Court.

Sheffield Watch Corp. convertible debentures, Applied Devices Corp. common, Sav-On Inc. common, Seaferro Inc. common, Canadian Javelin Ltd. common, Stirling Homex preferred, Stirling Homex common and Triex International Corp. common. The complaint alleged that Respondent owned all of these securities with the exception of Triex International Corp. in which Respondent had a short position of 800 shares. However, at a pre-trial conference held in Judge Greisa's chambers on September 18, 1974, counsel for the S.E.C. contended that the case was moot with respect to all securities except for Canadian Javelin Ltd. since the suspension of trading in all of the other securities listed in the complaint had by then expired. In addition, counsel for the S.E.C. repeated an argument which was set forth as the "Third Affirmative Defense" in the answer filed by the S.E.C. which stated:

> "19. The complaint purports to state a claim against the Securities and Exchange Commission. Congress has never declared that the Commission can be sued in its own name apart from having its orders reviewed in courts of appeal. Accordingly, this Court does not have jurisdiction of the claims made against the Securities and Exchange Commission, *eo nomine.*"

On November 8, 1974, Respondent filed a petition for review in the United States Court of Appeals for the Second Circuit which sought review of the then current orders which suspended trading in Canadian Javelin Ltd.[20] Upon the filing of this petition, the S.E.C. had 40 days under Rule 17(a) of the Federal Rules of Appellate Procedure to file the record in the court of appeals. As is its custom, the S.E.C. did not comply with the time re-

20. The petition for review was filed on November 8, 1974. It sought review of orders dated November 29, 1973, September 5, 1974, September 15, 1974, September 25, 1974, October 5, 1974, October 15, 1974, October 25, 1974, and November 4, 1974. A copy of the petition is included as Appendix D to the petition for a writ of certiorari filed in *Sloan v. S.E.C.*, No. 75-1507.

quirements of this rule.[21] On December 23, 1974, the S.E.C. did file something but rather than file the record, it filed a certified list. On January 22, 1975, Respondent then moved for an order requiring the S.E.C. to file the full record and while this motion was pending the series of orders suspending trading in Canadian Javelin Ltd. terminated. Eight days later, the S.E.C. filed a "suggestion" that the petition for review be dismissed as moot.

At that point the S.E.C. claimed that the case was moot because no order suspending trading in Canadian Javelin Ltd. was currently in effect. However, on April 29, 1975, the S.E.C. was forced to come up with a new argument because on that date the S.E.C. resuspended trading in Canadian Javelin Ltd. When the time came for the S.E.C. to file its brief, it argued that the case was moot in spite of the fact that there was then in effect an order currently suspending trading in Canadian Javelin Ltd., because that order was part of a different series of orders from the series of orders which included the orders which Respondent had challenged in his petition for review. Furthermore, argued the S.E.C., the reason for the second series of suspension orders was different from the reason for the first series of suspension orders (in spite of the fact that the reason for the second series of suspension orders had at that point not been publicly announced).[22]

21. Characteristically, in this Court as well, the S.E.C. was twelve days late in filing its brief, in spite of the generous period of 45 days given by the rules of this Court, and no permission for this late filing was either requested or obtained.

22. Securities Exchange Act Release No. 11383, 6 SEC Docket 780 (April 29, 1975), which announced the first of the second series of trading suspension orders states:

> "The Commission instituted the suspension pending dissemination of information concerning regulatory action by Canadian authorities."

The release is included as Appendix D to the brief for Samuel H. Sloan in response to the petition for a writ of certiorari. The reason given in the brief filed by the S.E.C. for the second series of trading suspension orders, however, was different from that reason.

In the decision subsequently rendered, the court of appeals did not discuss the mootness arguments advanced by the S.E.C. for the obvious reason that the court considered these arguments to be frivolous. This is apparent from the fact that the court dismissed the petition "without prejudice" and, in effect, directed the S.E.C. to give Respondent "some sort of administrative hearing." Had the court of appeals agreed with the S.E.C. that the case was moot, it simply would have dismissed the petition.

The S.E.C. prevailed in that first action largely as a result of its own delaying tactics and its attempts to frustrate the judicial process. Had the S.E.C. complied with the time requirements of Rule 17(a) of the Federal Rules of Appellate Procedure, it would have filed a record by December 18, 1974. Assuming Respondent filed his brief immediately thereafter and the S.E.C. departed from its usual practice of asking for an extension of time to file its brief, final briefs would have been filed and the case could have been argued prior to January 26, 1975, when the first series of trading suspension orders terminated.[23] The record filed by the S.E.C. consisted of photocopies of trading suspension orders and excised memoranda, the latter of which purported to set forth the reasons for the trading suspensions. In fact, the excised memoranda had significant portions deleted and these deletions were signified by blank white spaces at a place which had obviously been occupied previously by a paragraph or sentence and the names of all employees of the S.E.C. were deleted. Thus, as the court of appeals aptly noted,

23. This brief has adopted the consistent practice of referring to the trading suspension which lasted from November 29, 1973 until January 26, 1975 as the first series of trading suspension orders. However, as noted previously, this was actually the third series of trading suspension orders since trading in Canadian Javelin Ltd. was previously suspended from March 17, 1971 until April 5, 1971 and again from March 7, 1972 until August 9, 1972.

the record filed by the S.E.C. was "insurmountably sparse." Faced with this record, which did not come close to qualifying as "substantial evidence" under §556(d) of the Administrative Procedure Act, 5 U.S.C. §556(d), but apparently unwilling abruptly to cut off the S.E.C.'s exercise of its trading suspension power, the court of appeals, incorrectly, it is submitted, dismissed the proceeding without prejudice, thereby giving the S.E.C. the opportunity to construct a proper administrative record to facilitate review of the trading suspension orders.

The decision made by the court of appeals stemmed from the argument advanced by the S.E.C. that Respondent had "failed to exhaust his administrative remedies," coupled with a statement made by the S.E.C. attorney who argued the appeal orally that the S.E.C. was willing to grant Respondent "some sort of administrative hearing." The decision of the court of appeals was an unfortunate one and was clearly incorrect since it said that it was making its decision for the purpose of "satisfying any possible exhaustion requirements" and stated, "We do not suggest, nor need we decide, that such a requirement necessarily exists," 527 F. 2d at 12, whereas the court of appeals had acquired jurisdiction over the case and had before it the question of whether an exhaustion of remedies requirement existed and it was duty bound to decide that question rather than dismiss the proceeding without prejudice. As a result of this erroneous decision of the court of appeals and as a result of further delaying tactics adopted by the S.E.C. both when Respondent sought an administrative hearing before the Commission and later when the second petition for review was filed in the court of appeals, the S.E.C. was able to continue for another year its illegal practice of suspending trading in securities for periods exceeding ten days.

Following the decision of the court of appeals, Respondent wrote to the S.E.C. and requested the promis-

ed administrative hearing and, in addition, petitioned this Court for writ of certiorari to review the decision of the court of appeals. In opposition to this petition for writ of certiorari, the Solicitor General filed a brief on behalf of the S.E.C. which stated:

> "No order of the Commission suspending trading in CJL stock is now in effect. Whether or not the Commission might ever again suspend trading in CJL stock is purely a matter of conjecture, as is the question whether petitioner, if that event should occur, would again claim to be aggrieved. Cf. *Securities & Exchange Commission v. Medical Committee for Human Rights,* 404 U.S. 403, 406. Accordingly, this case probably is moot.[8]

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8. Because each suspension lasts but 10 days, a challenge to a single suspension might survive the suspension's expiration if it raised issues 'capable of repetition, yet evading review.' *Weinstein v. Bradford,* 423 U.S. 147, 148-149; *Southern Pacific Terminal Co. v. Interstate Commerce Commission,* 219 U.S. 498. The suspensions of CJL stock have aggregated lengthy periods however. Petitioner's reluctance to present his complaint to the Commission in the first instance, not the short duration of the Commission's orders, has frustrated effective judicial review here."

The exhaustion of remedies argument advanced by the S.E.C. which led to the first decision of the court of appeals was essentially fictitious. As the attorney for the S.E.C. stated at the beginning of oral argument in the court of appeals, there was no remedy available to a person in the position of Respondent. In addition, the brief filed by the S.E.C. in the court of appeals argued that Respondent lacked standing to challenge a trading suspension order and that the federal courts "probably" lack jurisdiction to review a trading suspension. Both arguments were rejected by the first panel of the court of appeals but had the S.E.C. succeeded with either of them, it would not have been obliged to give Respondent or, for

that matter, anyone else a hearing. During the course of the oral argument before the court of appeals, when the attorney for the S.E.C. perceived which way the wind was blowing, he realized that he had better change his position if he wanted to avoid an immediate curtailment of the S.E.C.'s exercise of its trading suspension power. Thus, he began to speak in terms of giving Respondent an administrative hearing. Back at the Commission, however, the appropriate persons were unwilling to make any concessions which might infringe on the S.E.C.'s arbitrary exercise of its trading suspension authority. Thus, when Respondent wrote to the S.E.C. and requested an administrative hearing, he was predictably rebuffed. Thereafter, Respondent filed a verified petition for review of the trading suspension orders. At this point, knowing that Respondent was likely to go back to the court of appeals if the S.E.C. did not act on his petition favorably, the S.E.C. concocted a procedure which would enable it later to state to the court of appeals that a remedy was available and which at the same time would spare the S.E.C. the burden of having to conduct an administrative hearing and to allow it to maintain a shroud of secrecy over the reasons for its trading suspensions. This procedure, which is not authorized by any provision of the Securities Exchange Act, was publicly announced in the Securities Exchange Act Release No. 12361, 9 SEC Docket 482 (April 22, 1976) and is included as Appendix E to the petition (Pet. App. E, p. 24a). This procedure requires that, although the S.E.C. customarily does not give the reason for a continued trading suspension, a person seeking to have a trading suspension terminated must "set forth with particularity the facts upon which petitioner relies" after which the S.E.C. would determine if "there is a genuine issue as to any material fact." As Respondent pointed out in his verified petition to the S.E.C. (App. 114-115), this procedure is inadequate because:

"To this date the S.E.C. has given no reason for its suspension of trading in Canadian Javelin Ltd. and since I do not know why the S.E.C. persists in suspending trading in Canadian Javelin Ltd. I cannot disprove any 'facts' upon which the suspensions are based. As I understand the Court of Appeals decision, the hearing which I have demanded should commence with testimony by the S.E.C. for the purpose of meeting the burden of proof which is properly on the S.E.C. to demonstrate that the suspensions of trading are legal. Only after cross-examination of the S.E.C.'s witness will I be in a position to know why the S.E.C. has suspended trading in Canadian Javelin Ltd. in the first instance and only then will I be in a position to rebut this testimony.

As §556(d) of the Administrative Procedure Act states:

"Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof . . . A sanction may not be imposed or rule or order issued except on consideration of the whole record of those parts thereof cited by a party and supported by and in accordance with reliable, probative and substantial evidence."

Since it is the S.E.C. that is the proponent of the rule or order in the case of a trading suspension order, it is clear that at a proper administrative hearing the S.E.C. would have the burden of proof and would be required to go first and produce evidence supporting the trading suspension. In this case the S.E.C. could not have done so because, as far as Respondent has been able to determine, no such evidence exists.

The procedure announced by the S.E.C. was also qualified by the following provision:

"The Commission will not be disposed to grant any such petition if the petitioner or anyone affiliated with the petitioner shall fail to cooperate in supplying relevant information to the Commission or shall in any way obstruct any inquiry by the Commission into the relevant facts."

It should be noted that the decision of the S.E.C. administrative law judge to revoke Respondent's broker-dealer registration and bar him for life from being associated with any broker or dealer cited as a reason for this severe sanction "Sloan's uncooperative attitude." (See Pet. No. 76-1547, App. D, p. 19a). Respondent is not aware of what, if anything, the administrative law judge was referring to because he was at all times fully cooperative with the S.E.C. and its staff investigators at least during the period in which he was actively engaged in the business of being a securities broker-dealer.[24] The point is that what constitutes a cooperative or uncooperative attitude is clearly a subjective determination and by insisting that a person who wishes to petition the S.E.C. to terminate its trading suspension must fully cooperate with the S.E.C., the S.E.C. has revealed that the "remedy" it claims to have created is nothing more than a sham. It might be added that the S.E.C.'s typical response in analogous situations has been to retaliate against any person seeking to challenge the S.E.C.'s exercise of power. Considering the record the S.E.C. has established, it would not be surprising if the S.E.C. would retaliate against any person who requested the S.E.C. to terminate its trading suspension in a security. A characteristic sort of retaliation would be a claim that the person was somehow

24. On August 16, 1973, subsequent to the decision of the administrative law judge, Respondent voluntarily stopped doing an active securities business and ceased being a market maker in over-the-counter securities. This was due to the lack of trading volume in the over-the-counter market and financial losses relating to a meteoric rise in the price of Canadian Javelin Ltd. shares, in which Respondent held a substantial short position. Thereafter, the S.E.C. refused to allow Respondent to withdraw his broker-dealer registration, thereby burdening Respondent with the requirement to adhere to the recordkeeping and net capital requirements for registered broker-dealers which in turn prohibited Respondent from obtaining employment in other fields and developing outside sources of income. This circumstance led Respondent to write a letter to the S.E.C. dated November 6, 1974, referred to in footnote 10 *supra*, advising that he would no longer cooperate with the S.E.C. staff.

involved in the wrongdoing which brought about the trading suspension and accordingly an investigation or prosecution of him. Respondent, of course, did not have to worry that the S.E.C. was going to institute proceedings against him in retaliation for his challenge to the trading suspension orders, inasmuch as the S.E.C. was already prosecuting him to the fullest extent possible. It does seem, however, that the decision of the S.E.C. to invoke the Draconian penalty of a lifetime bar upon Respondent from "being associated with any broker or dealer" was in direct retaliation for remarks by Respondent which were critical of the S.E.C. and for his challenges to the S.E.C.'s exercise of power as opposed to any actual wrongdoing on the part of Respondent. See e.g. Pet. No. 76-1547, App. E, p. 28a-29a and n. 28.

After Respondent submitted his verified petition for review to the S.E.C., the S.E.C. had a number of strategic choices. It could have simply ignored the petition and allowed the trading suspension eventually to terminate, but in that case Respondent would no doubt have complained to the court of appeals that the S.E.C. had reneged on its promise to the court of appeals to grant Respondent "some sort of administrative hearing," and perhaps that court would have instituted disciplinary or other proceedings against the S.E.C. and its staff. It could have scheduled an administrative hearing, but this was an action it was apparently not prepared to take. It could have denied the petition and allowed the trading suspension to continue, in which case Respondent would have gone back to the court of appeals and the S.E.C. would not have been able to argue that the case was moot. Finally, the S.E.C. could have done what it did, which was to adopt the tactic best suited to depriving Respondent of the opportunity for an administrative hearing while at the same time placing the S.E.C. in the most favorable possible position to defeat any attempts at obtaining judicial

review. The S.E.C. waited until it had decided to terminate the trading suspension, and in so doing issued four trading suspension orders after the receipt of the verified petition for review, and then denied the petition while simultaneously issuing its last trading suspension order. By so doing, the S.E.C. made certain that the series of trading suspension orders would terminate by the time the court of appeals could possibly pass upon their validity. The reason for this is that under Rule 17(a) of the Federal Rules of Appellate Procedure, the S.E.C. again had 40 days to file the record, whereas the last trading suspension order was due to expire in ten days. Thus, except in the unlikely event that the court of appeals was prepared to pass upon the validity of the trading suspension orders without seeing the orders themselves or the record upon which those orders were based, and except in the equally unlikely event that the court of appeals was prepared to convene, receive briefs, hear oral arguments and hand down a decision, all within the ten-day period during which the order would be in effect, the order would terminate before the court of appeals would be able to make a decision and consequently the S.E.C. would be able to argue that the case is moot. With regard to the first of the above considerations, the court of appeals may not even have had jurisdiction to decide the case prior to the filing of the record by the S.E.C. Section 15(c)(2) of the Securities Exchange Act, 15 U.S.C. §78*o*(c)(2), provides:

> "After the filing of a petition under this section, the court, under whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necesary and appropriate process to stay the order or rule or to preserve the status or rights pending its review; but . . . no such process may be issued by the court before the filing of the record or the material set forth in subsection (b)(2) of the section unless: (A) the Commission has denied a stay or failed grant requested relief, (B) a

reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission."

Respondent, due to prior experience, was familiar with the tactics customarily adopted by the S.E.C. and did the only thing he could possibly do to obtain review of the last trading suspension order while it was still in effect, which was to file a proposed order to show cause with the court of appeals which asked that (1) the S.E.C. be ordered to file the record of this proceeding forthwith, (2) the current order of suspension of trading in Canadian Javelin Ltd. be stayed, and (3) the court of appeals grant expedited review (App. 123). It was necessary for the Respondent to request an order to show cause because the next regular motion day scheduled by the court of appeals would have come too late to permit review of the order of trading suspension within the ten-day period. Respondent's affidavit in support an order to show cause stated (App. 125):

> "The last time I presented this question to this court, the specific suspension orders I was protesting had long since expired by the time briefs were filed. This led the S.E.C. to contend that my petition for review was moot and that I had failed to exhaust my administrative remedies with respect to the orders which were then current. At the present time, however, the S.E.C. can make neither objection. On the other hand, if this court does not act expeditiously, the current order will expire on May 2, 1976, and after that date the S.E.C. will no doubt make the same argument which permitted it to prevail previously."

It is noteworthy that because of the shortness of time this effort could have succeeded if and only if a judge of the court of appeals had been prepared to sign the order to show cause. Had a judge signed the order to show cause, the S.E.C. would have been ordered to file the record

forthwith and as soon as, but not until, it complied with this order, the court of appeals would have had exclusive jurisdiction to stay, modify or vacate the orders suspending trading in Canadian Javelin Ltd. Thus, had the order to show cause been signed, the court of appeals could conceivably have decided the case within ten days. There have been some cases, although few in number, where a court of appeals has acted this expeditiously. Even had the S.E.C. responded to the request for an order to show cause by filing written opposition, it might have felt constrained to make a concession which would foreclose a subsequent claim of mootness. Instead, the S.E.C. did something highly improper which Respondent was not told about until it was too late for Respondent to attempt to seek a remedy. Specifically, an attorney in the S.E.C. Office of General Counsel made an *ex parte* telephone call to the office of the motion clerk of the court of appeals, conveyed the secret information that the current order suspending trading in Canadian Javelin Ltd. was to be the last order, and asked that Respondent's request for expedited review not be granted for that reason. In this manner, the S.E.C. frustrated the last ditch attempt to obtain review of an order suspending trading in Canadian Javelin Ltd. while that order was still in effect.

In its petition for a writ of certiorari and again in its brief, the S.E.C. argues:

> "The court of appeals also erred in not dismissing Respondent's petition as moot. The suspension of trading in CJL stock had been terminated in May, 1976, prior to argument below and more than five months before the decision in this case."

The passage of five months between the time of the termination of the trading suspension and the date of the decision of the court of appeals was not due to any lack of

diligence on the part of Respondent, however. The petition for review was filed in the court of appeals on April 23, 1976, the first day that the last order suspending trading in Canadian Javelin Ltd. was in effect. Then not only did the S.E.C. not file the record within ten days so as to make possible expedited review but it did not even comply with the forty-day filing requirement set forth in Rule 17(a) of the Federal Rules of Appellate Procedure or with the scheduling order entered by the clerk of the court of appeals which ordered the S.E.C. to file a record by June 1, 1976. The S.E.C. subsequently filed two motions for an extension of time to file its brief (App. 128-129). The first was granted; the second was denied (App. 131). The S.E.C. then failed to comply with the time for filing set by the court, once extended, and did not file its brief until October 12, 1976, one day prior to the scheduled oral argument, which precluded Respondent from putting in an answering brief. The court of appeals itself took five weeks to decide the case (Pet. App. B, p. 3a). Thus, most of the five month period to which the S.E.C. refers in making its mootness argument passed because of delays by the S.E.C.

It is axiomatic that a government agency, or for that matter a private litigant, should not be permitted to take advantage of its own delays and its own improper attempts to frustrate the judicial process. Numerous improprieties have been committed by the S.E.C. in the course of this case going back to the first brief filed by the S.E.C. which stated that Respondent had "failed to exhaust his administrative remedies," when, in fact, no administrative remedies were available, following which the S.E.C. told the court of appeals that the S.E.C. was "willing in fact to grant Sloan some sort of administrative hearing" whereas the record establishes that the S.E.C. had no intention of doing so. Had the S.E.C. not committed these and other

improprieties, the question of the legality of the S.E.C.'s exercise of the trading suspension power would have been decided long ago and at a time when there was in effect an order currently suspending trading in Canadian Javelin Ltd. The S.E.C. should be satisifed that it succeeded in obstructing and delaying judicial resolution by the court of appeals for as long as it did and clearly is forclosed from arguing that this case is moot.

However, assuming that the S.E.C. had made an extraordinary departure from its usual practice and not acted improperly during the course of this litigation, its claim that this case is moot would still be meritless. To begin with, it should be noted that the S.E.C. does not wish this Court to declare this case presently to be moot, since that would result in the dismissal of the petition and leave the decision of the court of appeals standing as a declaratory judgment. Instead, it wants this Court to declare that the court of appeals should have delcared this case to be moot and further asks this Court to vacate the order of the court of appeals and extinguish any precedental value the decision of that court has. The reason it asks for this extraordinary relief is that it wishes to revert to its practice of issuing series of consecutive trading suspension orders so as to suspend trading for periods of indefinite duration, and it is now prohibited from doing so by the decision of the court of appeals declaring this practice to be illegal. The hope of the S.E.C. is that the decision of the court of appeals will be vacated and the legality of the practices of the S.E.C. will remain unsettled so that even if the practice of issuing consecutive trading suspension orders is illegal, the S.E.C. will be able to violate the law with impunity.

The attempt by the S.E.C. to obtain the judicial authorization of this Court for its plans to violate the law cannot be permitted to succeed for several reasons. It is

useful, again, to look at what the S.E.C. said in the court below. In support of its motion to dismiss this case as moot, the S.E.C. filed a six-page memorandum. Subsequently, when ordered to do so, the S.E.C. filed its brief which, on the point of mootness, repeated almost verbatim the statements made in the six-page memorandum. The brief for the S.E.C. stated (footnotes omitted):

"A *The Issues Presented by the Petition for Review are Moot.*

The series of trading suspensions sought to be reviewed here terminated on May 2, 1976, and, accordingly, there is no Commission order in effect which prevents petitioner from purchasing or selling shares of CJL stock. In addition, the series of trading suspension orders for which review is sought cannot be regarded in any sense as a reoccurrence of the Commission's previous suspensions of trading with respect to CJL stock, since they were entered in a wholly different factual context and for reasons totally independent of those which led the Commission to order the previous suspensions.

Courts do not sit 'to decide abstract, hypothetical or contingent questions . . . or to decide any constitutional question in advance of the necessity for its decision. . . .' *Alabama State Federation of Labor v. McAdory,* 325 U.S. 450, 461 (1945); *Thorpe v. Housing Authority of the City of Durham,* 393 U.S. 268, 284 (1969); See also *Socialist Labor Party v. Gilligan,* 406 U.S. 583 (1972). In addition, constitutional questions 'must be presented in the context of a specific live grievance.' *Golden v. Zwickler,* 394 U.S. 103, 110 (1969).

It is true that an exception to the 'mootness' principle has been recognized in controversies where the action complained of is 'capable of repetition, yet evading review. . . .' *Southern Pacific Terminal Company v. Interstate Commerce Commission,* 219 U.S. 498, 515 (1911). If petitioner were seeking review of an active series of trading suspensions and his efforts were frustrated by the ten-day duration of the Commission's orders, that exception might well have force here. But the series of trading

suspensions entered in conjunction with the Commission's enforcement action against CJL ended five months ago, and, since no suspension is now in effect or planned, any complaint which petitioner wishes to air with respect to the propriety of past suspensions is purely hypothetical. The Supreme Court has held that a case is moot where the possible recurrence of allegedly illegal conduct is speculative and the recurrence of the controversy 'purely a matter of conjecture.' *Securities & Exchange Commission v. Medical Committee for Human Rights,* 404 U.S. 403, 406 (1972).

Petitioner's brief cites *United States v. W.T. Grant Co.,* 345 U.S. 6729, 632 (1953), for the proposition that a voluntary cessation of allegedly illegal conduct does not make a controversy moot. That case was limited, however, by *Medical Committee* to apply only in cases where the allegedly illegal conduct is likely to be repeated. 404 U.S. at 406. At this point, whether there might be a future suspension of trading in CJL stock is bare speculation.

Citing *Roe v. Wade,* 410 U.S. 113 (1973) and *Sosna v. Iowa,* 419 U.S. 393 (1975), petitioner claims this case is one of those not moot because they would otherwise be 'capable of repetition yet evading review.' Petitioner ignores the fact that *Sosna* and *Roe* were class actions. The class nature of the suit was a major factor in the Court's decision in *Sosna* (419 U.S. at 401) . . . *Roe,* involving abortion laws, was found not moot because the court took judicial notice that 'preganancy *often* comes more than once to the same woman. . . .' 410 U.S. at 125. (emphasis added).

Finally, petitioner refers to *Sibron v. New York,* 392 U.S. 40 (1968) and *United States v. Schrimsher,* 493 F. 2d 842 (C.A. 5, 1974). These cases are both criminal cases, where the usual rules concerning mootness do not apply. . . The court in Sibron, 392 U.S. at 53-58, gave examples of the collateral consequences of criminal convictions that change the usual rules concerning mootness . . . These considerations do not apply in this case."

This is all that the S.E.C. said on the subject of mootness to the court of appeals. It is readily apparent that the arguments presented to this Court by the Solicitor General are dissimilar to the arguments presented to the court of appeals by the S.E.C. in a number of respects. The main thrust of the Solicitor General's argument to this Court is grounded on this Court's decision in *Weinstein v. Bradford*, 423 U.S. 147, 149 (1975). That case was not even cited in the brief filed by the S.E.C. in the court of appeals even though it knew or should have known of that case since it was cited by the Solicitor General in footnote 8 of the brief in opposition to the first petition for a writ of certiorari, No. 75-1507, quoted *supra*.

The S.E.C. makes extensive use of canned briefs, presumably because of large number of regional offices and branch offices of the S.E.C. and the large number of attorneys in each office, any or all of whom may be involved in extensive litigation, and its perceived need to have control over what all of these attorneys say. Thus, the S.E.C. can be seen to be filing the same brief over and over again in a variety of diverse circumstances and surprisingly often the cases cited by the S.E.C. stand for precisely the opposite proposition from that which it is asserting. In the instant case, the S.E.C. cited three decisions as primary authority on its claim that the case is moot: *Alabama State Federation v. McAdory, 325 U.S. 450 (1945); Thorpe v. Housing Authority, 393 U.S. 268 (1969);* and *Socialist Labor Party v. Gilligan, 406 U.S. 583 (1972)*. All three of these cases were cited in the brief filed in the court of appeals by the S.E.C. in another case, *S.E.C. v. Sloan*, Dkt. No. 75-6106, which was an appeal from various orders including an order adjudging Respondent to be in civil contempt. That appeal resulted in a decision reported as *S.E.C. v. Sloan*, 535 F. 2d 679 (2d Cir. 1976), *cert. denied 430 U.S.* 966 (1977). There is no

similarity whatever between the two cases except that in both cases the S.E.C. was claiming that the appeal was moot. It is hard to imagine three cases more worthless than those cited by the S.E.C. As Respondent stated in opposition to the motion to dismiss as moot (App. 137):

> ". . . Incidentally, in the first sentence of the second paragraph of page 4 of its memorandum, the S.E.C. again cites three cases which it cited in its brief in *S.E.C. v. Sloan*, Dkt. No. 75-6106. In that appeal, I filed a reply brief which pointed out that all three of these cases are wholly irrelevant and two of them do not even deal with mootness. Since it persists in citing these three cases, it is obvious that the S.E.C. is merely copying from its previous court filings and did not even bother to look up these cases prior to filing its memorandum in this Court. As I noted previously, none of the cases cited by the S.E.C. in *S.E.C. v. Sloan*, Dkt. No. 75-6106, were relied upon by this Court when it made its decision in that appeal."

After wasting the time and judicial resources of the court of appeals by filing a canned brief which cited wholly irrelevant cases and did not rely on, except to distinguish, any recent or relevant cases, the S.E.C., when confronted with an adverse decision, comes before this Court and complains that the holding of the court appeals "on the issue of mootness is sufficiently contrary to this Court's recent decisions to warrant summary reversal" (Pet. 12, n. 8). It is submitted that the S.E.C. is foreclosed from making this argument.

It is also appropriate to examine what the S.E.C. said on the subject of mootness when the predecessor case (No. 74-2457) was before the court of appeals. The brief of the S.E.C. stated (Brief pp. 12-13):

"ARGUMENT

I. THIS PETITION FOR REVIEW IS NOT PROPERLY BEFORE THIS COURT.

A. *The Issues Presented by the Petition for Review Are Moot.*

The series of trading suspensions sought to be reviewed here terminated in January 1975. While it is true that the Commission again suspended trading in the securities of CJL in April of this year and has entered orders continuing that suspension, these orders were for reasons wholly independent of the factual basis upon which the suspensions challenged in this Court were ordered. The Commission orders suspending trading in CJL stock beginning in April 1975 were not sought to be reviewed here; nor can these orders be regarded in any sense as a reoccurrence of the Commission's previous actions with respect to Canadian Javelin, since they were entered for a wholly different reason. See p. 4, n.5, *supra*. Moreover, any CJL stock owned by the Petitioner when the earlier orders were entered could have been sold during the period from January 26, 1975, through April 29, 1975.

Courts do not sit 'to decide abstract, hypothetical or contingent questions . . . or to decide any constitutional question in advance of the necessity for its decision. . . .' *Alabama State Federation of Labor v. McAdory*, 325 U.S. 450, 461 (1945); *Thorpe v. Housing Authority of the City of Durham*, 393 U.S. 268, 284 (1969); see, also, *Socialist Labor Party v. Gilligan*, 406 U.S. 583 (1972).

It is true that an exception to the "mootness" principle has been recognized in controversies where the action complained of is "capable of repetition, yet evading review." *Southern Pacific Terminal Company v. Interstate Commerce Commission*, 219 U.S. 498, 515 (1911). If Petitioner were seeking review of an active series of trading suspensions and his efforts were frustrated by the ten-day duration of the Commission's orders, that exception might well have force here. But the series of trading suspensions entered in conjunction with the Commission's enforce-

ment action against CJL ended six months ago, and any complaints which Petitioner wishes to air with respect to that series of suspensions are purely hypothetical at this point."

This is the full text of what the S.E.C. said to the first panel of the court of appeals on the question of mootness. Page 4, n. 5, to which the above quoted passage refers, stated:

> "*5/* The Company did not mail its annual report to the shareholders for the year ending December 21, 1973, until August 1974. Its quarterly reports required to be filed with the Commission on Form 10-Q for 1974, were not filed with the Commission until December 12, 1974. (Securities Exchange Act Release No. 11172, January 9, 1975, p. 2). On December 16, 1974, CJL sent a report to its shareholders and distributed it to the public. (*Id.*, p. 2.) On January 9, 1975, the Commission announced that trading would resume in CJL shares on January 12, 1975 (*id.*, p. 1). However, at the request of the Amex and CJL itself an additional ten-day suspension was entered on January 13 to permit the preparation of an orderly over-the-counter market for the shares in view of the fact that Amex was not yet ready to permit trading to resume. Finally, on January 22 at the request of the Amex and CJL a suspension order of four more days was entered so that trading on Amex and in the over-the-counter market could resume simultaneously. (Securities Exchange Act Release No. 11197, January 22, 1975).

While Petitioner notes (Pet. Br. 3) that trading in the securities of CJL was again suspended by the Commission on April 29, 1975, and the suspension has been continued by additional orders, this later suspension arises in a wholly different factual context and for reasons totally independent of the Commission's previous injunctive action and the previous suspensions. The later suspension was intended to permit dissemination of information concerning regulatory action against CJL by Canadian authorities.

(Securities Exchange Act Release No. 11383, April 29, 1975.)"

It should be noted that there are obvious discrepancies between what the S.E.C. said to the court of appeals in the first case and what it said to the court of appeals in the second case and even greater discrepancies between what the S.E.C. said to the court of appeals in both those cases and what it now says to this court. Essentially, what the S.E.C. said in the first case was that a challenge to a series of trading suspension orders becomes moot when that series of orders is allowed to terminate, even when a new series of trading suspension orders is initiated shortly thereafter. In the second case, it retreated from that position, since it had no need to do otherwise, and said that a challenge to a series of trading suspension orders is moot when there is no order currently in effect suspending trading at the time the case is argued before the court of appeals. In this Court, the S.E.C. takes a different approach which focuses on the status of Respondent. The brief for the S.E.C. states that in the court of appeals it viewed Respondent "merely in his capacity as a holder of the particular security initially at issue" (Brief p. 17). This statement is false. As an examination of the above quoted passages in the briefs filed by the S.E.C. in the court of appeals demonstrates, the S.E.C. said nothing about the status of Respondent to the court of appeals, at least not with regard to the question of mootness, nor could it have done so because at the time these cases were presented to the court of appeals the status of Respondent was different from that of "an investor generally". In particular, Respondent was a broker-dealer in securities whose registration had been revoked by the S.E.C. and the question of the validity of that revocation was then before the court of appeals. Had the court of appeals reached a different decision and reversed the order of the S.E.C. revoking Respondent's broker-dealer registration, Respondent would have been able to go back into business and the arguments which the S.E.C. presents to this Court regarding mootness would have been foreclosed. This is because a broker-dealer in securities in the normal course can be expected to do business in a large number of securities and any time the S.E.C. suspends trading in a security, a large percentage of all broker-dealers are likely to be adversely affected. A broker-dealer would not have to own the security to be adversely affected. For example, a broker-dealer which has a customer who holds the security in a margin account which becomes unsecured as a result of a trading suspension, a broker-dealer which has a fail to receive or a fail to deliver with another broker that refuses to complete its contractual obligations because of the trading suspension, and a broker-dealer which has recommended the stock to its customers and has come under a cloud as a result of the trading suspension, all would be adversely affected by an order of the S.E.C. suspending trading. Thus, if Respondent were a registered broker-dealer, as he was at the time of the orders suspending trading which were challenged in the first petition for review, there could be no claim that a challenge to the trading suspension orders had become moot under the standards set forth on pp. 17-19 of the S.E.C.'s brief in this Court. Therefore, the S.E.C. was forced to make a different argument when this case was pending before the court of appeals. It is submitted that the S.E.C. is now foreclosed from making a new argument to this Court. It should also be pointed out that to divert attention from the status of Respondent as a broker-dealer whose registration has been revoked, the S.E.C., as of this writing, has refused to certify the full record of this case to the court of appeals for transmission to this Court. This occurred because following the decision of the court of ap-

peals, that court returned the entire administrative record to the S.E.C. When this Court granted certiorari, the Clerk of this Court wrote to the clerk of the court of appeals and requested that court to transmit the record to this Court. The court of appeals then wrote the S.E.C. and requested the transmission of the record to that court. However, the S.E.C. refused to certify the record of the administrative proceeding which resulted in the revocation of Respondent's broker-dealer registration and which were part of the record when this case was before the court of appeals. And as a result, this Court does not have access to the full record which was before the court of appeals.

Referring again to the above-quoted passages from the briefs filed by the S.E.C. in the court of appeals, it should be noted that the "reasons" given by the S.E.C. for the trading suspensions are not in conformity with the record of the releases which the S.E.C. cites. Indeed, the briefs of the S.E.C. never cited the record, even though the record supposedly provided the reasons for the trading suspensions, and the facts set forth in footnote 5 quoted above as the reasons for the suspension were not set forth in the record of that appeal.

Ignoring all of the above, the brief of the S.E.C. in this Court focuses upon *Weinsten v. Bradford, supra.* However, that case did not represent the breaking of new ground with respect to the law of mootness. Rather, this Court simply expounded in somewhat greater detail on the principle stemming from *Southern Pacific Terminal v. I.C.C., supra,* that controversies which are "capable of repetition, yet evading review" will not be declared moot. This is clear from the subsequent decision of *Nebraska Press Association v. Stuart, supra,* a case involving judicial "gag" orders, where this Court stated that the case was not moot because (427 U.S. at 546-547):

> "The Nebraska Supreme Court's decision authorizes state prosecutors to seek restrictive orders in appropriate cases. The dispute between the State and the petitioners who cover events throughout the State is thus 'capable of repetition.' Yet, if we decline to address the issues in this case on the ground of mootness, the dispute will evade review, or at least considered plenary review in this Court, since these orders are by their nature short lived."

As noted previously, the S.E.C.'s brief ignores this case, and with good reason since it demonstrates the meritlessness of the S.E.C.'s mootness argument. If the arguments advanced by the S.E.C. here and in the court below were correct then in order to defeat the claim of mootness it would have been necessary for the Nebraska Press Association to show that there was a "substantial likelyhood" that the same judge would issue the same gag order in the same case for the same reason and that a member of the Nebraska Press Association would be aggrieved and seek review of that order, obviously an impossible requirement. Analogies to other authoritative decisions dealing with mootness equally demonstrate the meritless character of the S.E.C.'s mootness argument. Consider the case of *Roe v. Wade,* 410 U.S. 113, 125 (1973). That case involved a pregnant woman who wanted an abortion and sought a declaration that the anti-abortion laws were unconstitutional. By the time that case reached this Court, more than two years later, it was obvious that the same woman was not still pregnant with the same child. Nevertheless, this Court held that the case was not moot. In the instant case, the brief for the S.E.C. states (Brief, p. 19):

> "If respondent submits an affidavit stating the precise number of publicly traded issues he owns, and the number of those that are listed on the New York Stock Exchange or are of large banks and insurance companies, and further shows that he will continue to hold approximately as many

> similar securities in the next five years, we can then make an adequate assessment whether there is a 'reasonable expectation that respondent, in his capacity as an investor, will be subjected to the same action again'."

It is noteworthy that in this paragraph the S.E.C. asks Respondent to file an affidavit which predicts the future. If the same standard had been applied in *Roe v. Wade,* Roe would have been required to submit an affidavit stating not only that was she pregnant and wanted abortion but that after her pregnancy was terminated there was a "reasonable expectation" that she would become pregnant a second time and would want an abortion again. Of course, in actuality, Roe did not and could not have filed an affidavit of any kind, the plaintiff being anonymous and the name Roe being a pseudonym. It is also noteworthy that the 266-day human gestation period was sufficiently short to defeat a claim of mootness in *Roe,* even though it is much longer in duration than the ten-day trading suspension orders which are the subject of the instant case.

In the court below, Respondent was not content to rely entirely on his argument that this case was "capable of repetition, yet evading review" and set forth a number of alternative grounds, relying on cases such as *Sibron v. New York,* 392 U.S. 40, 51-58 (1968); and *United States v. Schrimsher,* 493 F.2d 842, 843 (5th Cir. 1974). The court of appeals, correctly, it is submitted, did not need to reach these alternative arguments. Since these arguments also bear on the question of whether this case is "capable of repetition, yet evading review" they will be repeated here. With the exception of the last of these arguments, which is addressed for the first time on pages 17-20 of the S.E.C.'s brief, none of these arguments have been responded to by the S.E.C. either here or in the court below.

C

One of the principles regarding mootness set forth in *Sibron v. New York, supra,* 392 U.S. at 57, is that for the government to sustain a claim that a case is moot, it must meet the burden of showing that no possible collateral legal consequences could arise as a result of the challenged orders. Here, the government, in this case the S.E.C., has not attempted to and clearly could not meet that burden of proof for a number of reasons which were set forth in Respondent's affidavit in opposition to the motion to dismiss this case as moot (App. 140-144). It should be noted that the S.E.C. never responded to any of the points made in Respondent's affidavit in opposition in the court of appeals nor does it do so in this Court. In the court of appeals, the S.E.C. was satisfied to limit its presentation to a certificate from the Office of Reports and Information Services which stated that there was no order currently in effect suspending trading in Canadian Javelin Ltd.[25] Not only did the S.E.C. not attempt to meet the affirmative burden of showing that no collateral legal consequences could arise as a result of the trading suspension orders, but

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25. The S.E.C.'s designation of documents to be included in the Appendix to this appeal did not include any of the papers filed in the court of appeals, in order to enable this Court to have ready access to the papers the S.E.C. filed in the court of appeals and to demonstrate that the S.E.C.'s presentation to this Court was different from its presentation to the court of appeals, Respondent cross-designated a number or documents including the S.E.C.'s motion to dismiss this appeal as moot. By cross-designating this motion, Respondent obviously intended that all of the papers filed by the S.E.C. in support of its motion to dismiss the appeal as moot would be included in the Appendix. However, the S.E.C. foiled this plan by including nothing more than a notice of motion (App. 129). It also failed to include the complete docket sheet of the court of appeals, although cross-designated by Respondent, thereby frustrating Respondent from demonstrating by documentary evidence such significant facts as the fact that the S.E.C. did not file its brief in the court of appeals until October 12, 1976, one day before the oral argument, and the fact that the S.E.C. filed only a certified list of documents comprising the record and even this list was filed three days late.

providing the listing broker does not publish a bid and ask quotation. See *Rothchild Securities Corp.*, CCH Fed. Sec. Law Rep. ¶79,593 [1973-74 Transfer Binder]. However, by coercing the National Quotation Bureau into an agreement not to publish any initial listings of a security without a bid or ask quotation, the S.E.C. has closed this potential loophole, thereby preventing any security from being quoted in the pink sheets which has not been expressly approved by the S.E.C.

A copy of Form 211, which is the submission required under Rule 15c2-11, is included as Appendix D to this brief. It can be seen that in the case of Canadian Javelin Ltd., a broker could easily complete Form 211 and meet the listing requirements of Rule 15c2-11. At a minimum, a broker can comply with Rule 15c2-11 by submitting certain specified information, including the names of the members of the board of directors, the location of the principal office of the company, and the company's most recent balance sheet and profit and loss and retained earnings statement and similar information for the two preceding years. In the case of Canadian Javelin Ltd., all this information is currently on file with the S.E.C. inasmuch as Canadian Javelin Ltd. has a current 10-K and 10-Q report on file there. Thus, it can be seen that a broker could easily comply with Rule 15c2-11 and the S.E.C.'s refusal to permit a listing in Canadian Javelin Ltd. is arbitrary and capricious.

The point is that were it not for the trading suspension orders which have now expired, the S.E.C. would not have been able in the first instance to invoke Rule 15c2-11 to prevent the quotation of shares of Canadian Javelin Ltd. This is because paragraph (f)(3) of Rule 15c2-11 provides that the rule shall not apply to the "publication or submission of a quotation respecting a security which has been the subject of both bid and ask quotations. . . with no more than four business days in succession without such a two-way quotation." Thus, any security, including Canadian

Javelin Ltd., which has been quoted on a continuous basis would not become subject to Rule 15c2-11 except in the event that the S.E.C. suspended trading in the security for a period of more than four business days. Conversely, any security, including Canadian Javelin Ltd., which has been suspended by the S.E.C. for a period of more than four business days, automatically becomes subject to Rule 15c2-11 and this gives the S.E.C. the power to exercise the arbitrary authority to prevent future trading in that security. In this case, the S.E.C. has exercised that power. Were this Court to declare all of the 37 consecutive trading suspension orders to be invalid,[26] then it would follow that the S.E.C. could not invoke Rule 15c2-11 and it would be forced to permit trading in Canadian Javelin Ltd. to resume. Hence, this case is not moot. This point is further illustrated by the fact that the release announcing that the suspension of trading in Canadian Javelin would terminate, Securities Exchange Act Release No. 12394, 9 SEC Docket 509 (April 29, 1976), stated the following:

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26. The S.E.C. may, and very likely will, argue that this Court cannot determine the validity of the first of the 37 trading suspension orders because the court of appeals refused to vacate that order and this Court denied the petition filed by Respondent for a writ of certiorari to review that order. However, this argument, if made, will be without merit. As Respondent pointed out on pp. 21-22 of his petition for a rehearing of the denial of his petition for a writ of certiorari, Article III of the Constitution limits this Court in cases such as this to the exercise of appellate jurisdiction. Thus, except in the instance where intervening circumstances have arisen since the decision of the court of appeals, which is not the case here, this Court must view this appeal from the same posture as did the court of appeals. In other words, if this Court were to assume the validity of the first trading suspension order or, for that matter, the order revoking Respondent's broker-dealer registration, it would alter the character of this case and would be exercising original rather than appellate jurisdiction. This is not to say that this Court must determine the validity of the initial trading suspension order, only that it has jurisdiction to do so and must do so if a determination of the validity of that order is necessary to the proper outcome of this appeal.

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Javelin Ltd., which has been quoted on a continuous basis would not become subject to Rule 15c2-11 except in the event that the S.E.C. suspended trading in the security for a period of more than four business days. Conversely, any security, including Canadian Javelin Ltd., which has been suspended by the S.E.C. for a period of more than four business days, automatically becomes subject to Rule 15c2-11 and this gives the S.E.C. the power to exercise the arbitrary authority to prevent future trading in that security. In this case, the S.E.C. has exercised that power. Were this Court to declare all of the 37 consecutive trading suspension orders to be invalid,[26] then it would follow that the S.E.C. could not invoke Rule 15c2-11 and it would be forced to permit trading in Canadian Javelin Ltd. to resume. Hence, this case is not moot. This point is further illustrated by the fact that the release announcing that the suspension of trading in Canadian Javelin would terminate, Securities Exchange Act Release No. 12394, 9 SEC Docket 509 (April 29, 1976), stated the following:

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"Furthermore, brokers and dealers should be alert to fact that, pursuant to Rule 15c2-11 under the Exchange Act, at the termination of the suspension, no quotation may be entered unless and until they have strictly complied with all of the provisions of said rule. If any broker or dealer has any questions as to whether or not he has complied with said rule, he should not enter any quotation but immediately contact the staff of the S.E.C. Division of Enforcement in Washington, D.C. If any broker or dealer is uncertain as to what is required by Rule 15c2-11, he should refrain from entering quotations relating to the securities in question until such time as he has familiarized himself with said rule and is certain that all of its provisions have been met. If any broker or dealer enters any quotation which is in violation of said rule, the Commission will consider the need for prompt enforcement action."

The above paragraph would seem to contain a virtual admission that Rule 15c2-11 is unconstitutional under this Court's decision of *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). In any event, it is apparent that the S.E.C. is using the now-expired trading suspension orders as a basis for preventing future trading in Canadian Javelin Ltd. It is noteworthy that this point was made in Respondent's affidavit to the court of appeals in opposition to the motion to dismiss this case as moot (App. 141), in the brief Respondent filed in the court of appeals, and on page 9 of the brief filed by Respondent in this Court in opposition to the petition for a writ of certiorari and at no time has the S.E.C. addressed itself to this point. It should also be added that at this very moment Respondent would like to be able to buy and sell stock in Canadian Javelin Ltd. and is prevented from doing so by the S.E.C. as an

collateral consequence of the now expired trading suspension orders.

Going further on the point of collateral legal consequences, it has been held by the courts that the stigmatizing effect of S.E.C. action in itself gives an adversely affected party standing to seek review. See e.g. *Buchman v. S.E.C.*, 553 F. 2d 816, 823 (2d Cir. 1977). In the instant case there is a definite stigma resulting from the trading suspension and this stigma is likely to adversely affect Respondent. Shares in Canadian Javelin Ltd. have now been suspended by the S.E.C. during four distinct time periods. As a result, Canadian Javelin Ltd. and its officers and directors have been branded as evil-doers in the minds of the investing public.[27] Members of the investing public are likely to be wary of purchasing Canadian Javelin Ltd. shares and, in fact, the compliance department of most major stock brokerage firms has issued directives prohibiting their registered representatives from soliciting either purchase or sales orders in Canadian Javelin Ltd. Indeed, some brokers refuse to make security transactions in Canadian Javelin Ltd. under any circumstances. There is good reason for this, since past history demonstrates that an individual who decides to purchase Canadian Javelin Ltd. shares runs the substantial risk that trading in Canadian Javelin Ltd. will be suspended at some time in the forseeable future. Since public investors are likely understandably to be reluctant to purchase these shares, it follows that even assuming these shares were allowed to trade in the United States, they would trade at a severly depressed price. This adversely affects Respondent, who is a stockholder in Canadian Javelin Ltd., since the stigmatizing effect of the past trading suspensions will result in Canadian Javelin Ltd. trading at a lower price

27. An example of the stigmatizing affect can be seen in the article "John Doyle—Evil Genius," *Barron's*, August 16, 1976, p. 3, which, in accusatory fashion, cites the trading suspensions of the S.E.C.

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than it would have traded had it not been suspended for lengthy time periods.

In addition to being stigmatized, there are other direct adverse collateral consequences flowing from the trading suspension. There is presently pending in the District Court for the District of Columbia a suit against Canadian Javelin Ltd. and its board of directors and principal stockholder. In this suit, *S.E.C. v. Canadian Javelin Ltd., et al.* Civil Action No. 76-2070 (D.D.C.), the S.E.C. is using the past late filings which, the S.E.C. alleges, resulted in suspensions of trading in Canadian Javelin Ltd., as the basis for seeking injunctive relief. This phenomenon was described in the article by Goldman and Magrino, both of whom formerly held the position of Chief Interpretive Attorney of the New York Regional Office of the S.E.C., entitled *Suspension of Trading in Securities: Some Observations on Sections 15(c)(5) of the Securities Exchange Act of 1934*, 15 N.Y.L. Forum 638, 654 n. 96 (1969), which stated:

> "It would appear that at times due perhaps to an excess of zeal, this has taken on the trappings of a boot-strap operation wherein an order of suspension is entered and is used as the basis for seeking an injunction—which is often consented to by the respondents in order that trading may be resumed."

Indeed, the suit in the District for the District of Columbia is in itself being used as a basis for preventing trading in Canadian Javelin Ltd. to resume. The original complaint in that action alleged that Canadian Javelin Ltd. was delinquent in filing its 10-K report.[28] The S.E.C. subsequently amended the complaint to allege that the 10-

28. See Litigation Release No. 7642, 10 SEC Docket 948 (November 10, 1976).

K report filed by Canadian Javelin Ltd. was improper and contained false and misleading statements.[29] This seems to be the basis for the S.E.C.'s present refusal to allow trading in Canadian Javelin Ltd. to resume. Under Rule 15c2-11, the S.E.C. must allow trading to resume in a security if the issuer of that security is up to date in filing its 10-K and subsequent reports. However, the theory of the S.E.C. apparently is that since the 10-K report contains "false and misleading statements," it is a nullity and, therefore, trading in Canadian Javelin Ltd. may not resume. This suit, unlike prior suits against Canadian Javelin and its officers and directors,[30] is being contested. To give an idea of how far the S.E.C. intends to carry this particular suit against Canadian Javelin Ltd., Respondent understands that in the course of settlement negotiations the suggestion has been made that Canadian Javelin Ltd. agree to the voluntary deregistration of its shares under §12(j) of the Securities Exchange Act, 15 U.S.C. §78 *l* (j). If that were to occur, brokers and dealers would be forever prohibited from making "use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or induce the purchase or sale of", shares of Canadian Javelin Ltd.

It can also be seen that the statement in the petition (Pet. 12, n. 7) which is quoted on page 15 of the S.E.C.'s brief, that "there is no reason to believe that it will be necessary to suspend trading in Canadian Javelin Ltd. again," is simply a lie. Of course, in the opinion of Respondent, who is a proponent of the free enterprise system and the law of supply and demand, it is not likely that it would ever be "necessary" to suspend trading in

29. See Litigation Release No. 7779, 11 SEC Docket 1772 (February 14, 1977).

30. See *S.E.C. v. Canadian Javelin Ltd.*, 1958 Civil Action file 138-85 (S.D.N.Y.); *S.E.C. v. Canadian Javelin Ltd.*, Docket No. 73 Civil 5074 (S.D.N.Y.); *S.E.C. v. Doyle et al, supra.*

Canadian Javelin Ltd. However, any objective viewer of t[he] situation will almost certainly conclude that the time w[ill] someday come when the S.E.C. will, in fact, again suspe[nd] trading in Canadian Javelin Ltd., that is if trading [in] Canadian Javelin Ltd. is ever allowed by the S.E.C. [to] resume and if this Court reverses the decision of the co[urt] below.[31] When a corporation becomes delinquent in fili[ng] its 10-K report, the S.E.C., in recent years, has adopted t[he] practice of almost routinely suspending trading in [its] securities. See e.g. Securities Exchange Release No. 107[32,] 4 SEC Docket 82 (April 11, 1974) which announced that t[he] S.E.C. was simultaneously suspending trading in securit[ies]

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31. If this Court affirms the decision of the court below, the S.E.C. [will] presumably retain the power to issue a single, i.e. non-consecutive, trad[ing] suspension order at some time in the future. However, a single trad[ing] suspension order would not serve the purposes for which the S.E.C. [has] suspended trading in Canadian Javelin Ltd. in the past. In the case of Canad[ian] Javelin Ltd., the S.E.C. has used the trading suspension power as a sanctio[n to] force Canadian Javelin Ltd. to take certain action such as issue a press rele[ase,] consent to an injunction, file a report with the S.E.C. or cooperate with [the] S.E.C. staff. A single ten-day suspension order would presumably not [ac]complish these purposes. The article by Goldstein & Magrino, *supra*, addre[sses] this point as follows (15 N.Y.L. Forum at 655):

> "What is confusing is that in the absence of any affirmative requirement by the Commission or undertaking by [the corporati[on] whose securities are suspended from trading] such as the dissemin[ation] of new or corrective financial or other information, it is rather [difficult] to comprehend the purpose served by a mere ten day [suspension] period. We have noted that in previous instances the ann[ouncement of] suspension has served this reasonable purpose and [the] length of the suspension period was specifically geared to [the time interval] necessary.
>
> What is pointed up here is the ambiv[alent] role played by the suspension device. It would, at times, [appear that suspension of] trading is used to perform and promot[e the function of full disclosure.] In such instances, the length of its [duration may be reasonable and] corrective. Yet, in other instances [especially where the ten day periods] multiply, it would seem to be [used in the nature of a sanction—and] such has never been author[ized by Congress (for the simple reason that] the persons most lik[ely to suffer ultimately are the public] shareholders)."

of 48 corporations for reason of a delinquency in a 10-K filing and Securities Exchange Act Release No. 12360, 9 SEC Docket 481 (April 22, 1976) in which the S.E.C. stated that it was simultaneously suspending trading in 34 securities for the same reason. In the case of Canadian Javelin Ltd., however, when it became delinquent in its 10-K filing, the S.E.C. took the unusual action of instituting suit to compel the filing but did not suspend trading, in contrast to what it has done on all comparable occasions. The obvious reason for this is that the S.E.C.'s suit was filed on November 8, 1976, just 26 days after the S.E.C. had argued orally before the court of appeals that it had no plans to suspend trading in Canadian Javelin Ltd. and, as it turned out, just ten days before the court of appeals made its decision (Pet. App. B, p. 3a). It is clear that the S.E.C. did not suspend trading in Canadian Javelin Ltd. on November 8, 1976 because to do so would have been to extinguish its mootness argument in the case then *sub judice* in the court of appeals and also because the S.E.C. had invoked Rule 15c2-11 to prohibit trading in Canadian Javelin Ltd. from resuming and, therefore, a suspension of trading was unnecessary.[32]

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32. In many cases, curiously enough, the S.E.C. has suspended trading in a security in which there was no trading. One such instance took place on November 29, 1973, when the S.E.C. suspended trading in securities of Canadian Javelin Ltd. although trading in those securities had been suspended by the American Stock Exchange since October 25, 1973, as a result of an unfavorable article published in *The Wall Street Journal* on that date, and an over-the-counter trading market had not developed. *The Wall Street Journal* article was entitled, "Now You See It: Canadian Javelin Doesn't Have Gold Rights In Panama, Nation Says; Firm Disputes That." A second unfavorable article appeared in *The Wall Street Journal* on October 30, 1973. An example of a security which was suspended from trading by the S.E.C. although it never traded either on a national securities exchange or in the pink sheets or any other inter-dealer quotation system for at least the preceding five years is Dumont Corp., which was suspended from trading by the S.E.C. on April 11, 1974, simultaneously with 47 other securities (App. 190). This anomaly is not inconsistent with the policies of the S.E.C. since many corporations are

With further regard to the S.E.C.'s assertion that "there is no reason to believe that it will be necessary to suspend trading in Canadian Javelin Ltd. again," the attention of the Court is directed to the article entitled "John Doyle—Evil Genius," *Barron's*, August 16, 1976, p. 15, which records the reaction of Stanley Sporkin, the chief of the Division of Enforcement of the S.E.C., to a special stockholder's meeting of Canadian Javelin Ltd. held on July 30, 1976, in accordance with an order of a justice of the Quebec Superior Court (App. 160-162):

> " 'We are not going to take this lying down,' barked Sporkin. 'There were brazen acts conducted in Canada. The American stockholders are being put upon here.' "

Any one reading this statement would assume that at the time of the statement there was excellent reason to believe that it was likely that the S.E.C. was about to suspend trading in Canadian Javelin Ltd. again. Yet at the very moment this statement was made, which was some time after the July 30, 1976 meeting and some time before the August 16, 1976 *Barron's* article, the S.E.C. was telling the court of appeals that "there is no reason to believe that it will be necessary to suspend trading in Canadian Javelin Ltd. again." It is noteworthy that Mr. Sporkin has never denied making the statement, and he would be expected to have done so if he had been misquoted. Of course, when the S.E.C. says that "there is no reason to believe that it will be necessary to suspend trading in Canadian Javelin Ltd. again" it is not really saying, not could it say, that an

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required to register with the S.E.C. pursuant to 12(g)(1) of the Securities Exchange Act, 15 U.S.C. §78 *l*(g)(1), even though there has never been a public trading market for any of their securities. These companies, therefore, sometimes become delinquent in their 10-K filings and are "suspended from trading" for that reason.

objective outside observer would reach this conclusion. What it must be saying is that as long as the instant case is pending, and as long as the order of the court of appeals prohibiting it from issuing consecutive orders suspending trading in Canadian Javelin Ltd. stands, it has reached the conclusion that it will not be necessary to suspend trading in Canadian Javelin Ltd. again. Should the occasion arise where the S.E.C. decides to suspend trading in Canadian Javelin Ltd. even before the instant case has been decided, it will still have in reserve the argument which it used when the first case was pending before the court of appeals and which it can always use, due to the policy of the S.E.C. of not announcing to the public the reasons for continuing a trading suspension, that the current trading suspension order was issued for a different reason than the prior trading suspension orders and hence the question of the validity of the prior trading suspension orders is "moot." It should also be pointed out that the attorneys from the Office of General Counsel of the S.E.C. who are appearing before this Court in the instant case are proporting to speak for the S.E.C., although they can hardly do so. The S.E.C. consists of five commissioners who are political appointees and who come and go. Since the date of the decision of the court of appeals, one commissioner has resigned and two new commissioners have been sworn in. There have been many cases in which the S.E.C. Division of Enforcement, in the course of litigation, has taken a position directly contrary to the official pronouncements of the S.E.C. itself. It appears that the Division of Enforcement and the Office of the General Counsel of the S.E.C. act pretty much independently from the S.E.C. commissioners, or at least they claim to do so. The S.E.C. often releases statements to the effect that the opinions of the staff and even the opinions of the individual commissioners cannot be taken to be the opinions of the S.E.C. Therefore the attorneys appearing in the instant case are not authorized to state

what the S.E.C. itself plans to do or not to do.[33]

In addition to the foregoing, at least one collateral legal consequence may flow as a result of a favorable decision of this Court. It must be remembered that Respondent originally instituted suit against the S.E.C. seeking a declaration that the S.E.C.'s exercise of its trading suspension power was invalid, at a time when the S.E.C. was prosecuting two proceedings against Respondent. Respondent sued the S.E.C. in the belief that if he were successful in his attempts to have a court declare the exercise of the trading suspension power to invalid, he might well upend the S.E.C.'s prosecution of him. This conclusion is still justified and this alone demonstrates that Respondent has a vital interest in the outcome of this controversy and this case is not moot. To begin with, had it not been for the S.E.C.'s exercise of the trading suspension power, Respondent would likely not have been barred from the securities business and conversely if he prevails in this Court, Respondent's position in any proceedings he might institute to have that bar lifted will be greatly strengthened.[34] For example, the decision in *S.E.C. v.*

33. Of course, it appears from the memoranda which comprise the record of this case that it is the S.E.C. staff and the Secretary of the S.E.C., and not the S.E.C. itself, which makes the actual decision of whether or not to suspend trading. As page 32 of the brief in response to the petition points out, the memoranda in the record are uniformly addressed from the Division of Enforcement to the Commission and are dated usually several days after their respective trading suspension orders and are clearly prepared for the purpose of explaining to the S.E.C. why the S.E.C. staff decided to suspend trading in the security. From this it is obvious that the commissioners themselves play no active role in the process of deciding whether or not trading should be suspended, and therefore perhaps the S.E.C. staff is in a position to tell this Court and the court of appeals what the S.E.C. will and will not do.

34. In spite of this Court's denial of the petition for a writ of certiorari to review that part of the decision of the court of appeals which affirmed the revocation of Respondent's broker-dealer registration, there are still avenues available to obtain review and/or reconsideration. The S.E.C. itself recently

Sloan, 369 F. Supp. 996, 1001, ¶28 (S.D.N.Y. 1974) contains a finding that on May 24, 1973 Respondent had a net capital deficiency in the amount of $4,383. An injunction based in part on this finding was cited as a basis for the decision to revoke Respondent's broker-dealer registration. Moreover, the finding itself was specifically cited by the S.E.C. as establishing a recurrance of violations of the net capital rule. See *In the Matter of Samuel H. Sloan*, Securities Exchange Act Release No. 11376, 6 SEC Docket 772, 775, n. 19 (Pet. in 76-1547, App. 32a, n. 19). However, this figure was arrived at by deducting from the capital of Respondent the sum of $11,000, which represented the gross dollar amount of fails to deliver by Respondent in shares of Triex International Corp., a security then the subject of a series of consecutive ten-day trading suspension orders which had the effect of suspending trading for more than one year (App. 207). The basis for the S.E.C.'s deduction of $11,000 was a release, dated June 8, 1973 and applied 15 days retroactively in

stated: "so-called lifetime bars are actually bars of indefinite duration." *In the Matter of Steadman Security Corp.*, Securities Exchange Act Release No. 13695, 12 SEC Docket 1042, 1064 n. 100 (June 29, 1977). For that matter, as footnote 26 of this brief has pointed out, this Court presently has jurisdiction to review the order revoking Respondent's broker-dealer registration, notwithstanding the denial of certiorari. The reason for this is that the decision and order of the court of appeals involved a consolidated case wherein Respondent sought review of the order revoking his broker-dealer registration and a series of thirty-seven trading suspension orders. The court of appeals upheld two of the orders and vacated the other thirty-six orders. Although this Court granted the S.E.C.'s petition and denied Respondent's petition, the record of the entire case, and not just the record of the thirty-six orders which the court of appeals vacated, is required to be transmitted to this Court. This Court has the discretionary authority to pass upon the validity of the order revoking Respondent's broker-dealer registration much as if, in a case where this Court grants certiorari but limits the argument to certain specified questions, it may, in reaching a decision, pass upon other questions, either with or without hearing reargument. Admittedly, it seems unlikely that this Court will pass upon the validity of the order revoking Respondent's broker-dealer registration, but the fact remains that it has jurisdiction to do so.

order to penalize Respondent, entitled *Interpretation of Rule 15c3-1 Respecting the Net Capital Treatment of Securities Positions and Transactions in Suspended Securities*, Securities Exchange Act Release No. 10209, 1 SEC Docket, No. 19 (June 8, 1973). This release was issued in accordance with the S.E.C. practice of making a substantive change in a rule by issuing an "interpretation" of the rule which interprets the rule to mean something different from what it says. In this case, Rule 15c3-1, the S.E.C. net capital rule, provides that fails to deliver are counted as an asset and fails to receive are counted as a liability, the logic of this being that fails to deliver represent accounts receivable which are due upon the delivery of securities and fails to receive represent accounts payable due upon the receipt of securities. In the double entry bookkeeping system, every asset is offset by a liability. However, Securities Exchange Act Release No. 10209 upset this equation by its "interpretation" that fails to deliver in suspended securities were not an asset. It so happened that Respondent had a short position of 800 Triex international Corp. shares, and these shares were represented by fails to deliver in that security to various brokers. Under Securities Exchange Act Release No. 7920 (July 19, 1966), explained in Goldman and Magrino, *Suspension of Trading in Securities: Some Observations on Section 15*(c)(5) *of the Securities Exchange Act of 1934*, 15 N.Y.L. Forum 633, 638-643 (1969), brokers are not obliged to accept delivery in suspended securities while the suspension is still in effect. The result of this plus the standard treatment of items under Rule 15c3-1 is that a broker who is short a suspended security is required to carry the short position on his books marked at the full market value at the time trading was suspended and to deduct from his capital a haircut of 30% of that evaluation while at the same time is required to carry long positions in suspended securities at zero and is required to write off to zero any offsetting fails to deliver in

suspended securities. This result is illogical and directly contrary to the express language of Rule 15c3-1. The point is that had the S.E.C. not suspended trading in Triex International Corp. for a period of more than one year by the use of consecutive ten-day trading suspension orders which the court of appeals in the instant case declared to be illegal, Respondent would not have been found to be in violation of the net capital rule on May 24, 1973 and, hence, might not have been barred from the securities business. From this it follows that if Respondent prevails in the instant case in this Court, he might be able to use this as a basis to reopen successfully the proceedings against him, since the S.E.C. cannot be permitted to use its own illegal orders as the basis for imposing sanctions against Respondent under the "fruit of the poisonous tree" and related doctrines.[35] Hence, this case is not moot.

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As noted previously, all of the above points were briefed and argued by Respondent in the court of appeals and in response to the petition for a writ of certiorari and the S.E.C. has remained silent. Therefore, the S.E.C. is foreclosed from raising new objections in this Court. However, there is one argument which Respondent made in the court of appeals which the S.E.C. did not respond to there but which, nevertheless, the S.E.C. has addressed in its brief to this Court. That concerns statements made in paragraph 5 of the affidavit filed by Respondent in op-

35. Even the reversal of one of the findings against Respondent would be sufficient to require reconsideration by the S.E.C. See *NLRB v. Pipefitters*, 429 U.S. 507, 522 n. 9 (1977); *Todd & Co. v. S.E.C.*, 557 F. 2d 1008, 1014 (3rd Cir. 1977). Therefore, if this Court does not reverse the decision of the court of appeals with regard to trading suspensions, it should remand that part of this case dealing with the revocation of Respondent's broker dealer registration to the S.E.C. for reconsideration in light of this Court's decision.

position to the motion of the S.E.C. to dismiss the appeal is moot (App. 153). The statement concerns the number of securities owned by Respondent. The conclusion stated by Respondent in his affidavit was (App. 153):

> "An elementary knowledge of probability theory establishes that based upon this, the likelihood is miniscule that the S.E.C. will never again suspend trading in any security in which I have an interest. Thus, even under the standard proposed by the S.E.C., this case is not moot."

Although the S.E.C. said nothing about this to the court of appeals, in its brief to this Court, the S.E.C. has addressed the point made by Respondent and has siezed upon an obvious typo as the basis for launching a general attack on Respondent's credibility. In order to do so, page 16 of the brief filed on behalf of the S.E.C. in this Court quotes a sentence from Respondent's brief which stated (Br. in Response, p. 18):

> "As Respondent set forth in an affidavit filed with the court of appeals . . . Respondent continues to own stock in nearly 400 publically traded corporations . . ."

However, the affidavit in question actually said 200, rather than 400, corporations (App. 153). Therefore, the obvious fact is that there was an error in the brief filed by Respondent in this Court with regard to the number of securities.[36] However, rather than simply point out this

36. The S.E.C. has not been without errors of its own. For example, the complaint filed by the S.E.C. in 1971 alleged that Respondent was "not permitting" violations of the Securities Exchange Act of 1934. When Respondent understandably moved to dismiss for failure to state a claim, the S.E.C. stated that this was a "typographical error," and the words "not permitting" should have read "now permitting." Judge Ward accepted this explanation and denied the motion (See Pet. 76-365, p. 17a). In addition the papers filed by the S.E.C. stated that Respondent had never provided the S.E.C. with a copy of his April, 1971 trial balance, a charge vehemently denied by Respondent. After resisting discovery motions, subpoenas and other court process to compel the S.E.C. to produce the trial balance, the S.E.C., during the course of the trial before Judge Ward in December, 1973 searched its files and produced two copies of the April, 1971 trial balance, after having been ordered by Judge Ward to do so. The S.E.C. admitted that these documents had been delivered to the S.E.C. on May 20, 1971, and on June 18, 1971, but stated that they had been lost in the files of the attorney assigned to the case due to an "oversight." Material subsequently obtained by Respondent pursuant to the Freedom of Information Act includes a 1971 memorandum by the same S.E.C. attorney discussing the documents in question, however. Meanwhile, and S.E.C. investigator testified at the administrative hearing before the S.E.C. and again at the trial before Judge Ward that Respondent never submitted an April, 1971 trial balance and this charge was included in proposed findings of fact filed with the Administrative Law Judge and with Judge Ward and this testimony has never been withdrawn. Other "errors" committed by the S.E.C. include the misreading or misquotation of transcripts introduced for impeachment purposes during the course of the trial before Judge Ward.

error, the S.E.C. has made a great issue of this, stating (Brief p. 18), "the number of publically traded corporations in which respondent owns shares is now in doubt. . . . A more accurate count is necessary before a meaningful assessment of probability bearing upon mootness may be made."

It so happens that there are substantial problems in making an "accurate count" of the securities owned by Respondent. The vast majority of securities owned by Respondent were purchased when Respondent was an active broker-dealer in securities. Due to the nature of the type of securities most often dealt in by Respondent, namely low-priced securities traded over-the-counter, a broker, after selling the security to Respondent, would sometimes discover that there was no longer a transfer agent and the delivery of shares in good negotiable form could not be made. Rather than antagonize the broker in

question, which was most often a major firm, and risk losing its business, Respondent did not issue a buy-in notice and instead allowed the firm to hold the securities in question on account. Since the S.E.C. apparently now wishes to verify the exact number of securities owned by Respondent, presumably by a physical inspection of these securities, Respondent, for the purposes of this appeal, has made a list of securities he owned at the time of the decision of the court of appeals dated November 18, 1976 and were or are now in his physical possession. Respondent intends to produce these securities for inspection by the S.E.C. and the Solicitor General and, if the S.E.C. refuses to agree to this inspection,[37] to produce them at the time this case is

37. In analogous situations in the past the S.E.C. has refused to agree to an inspection. For example, during the course of events which led to the decision reported as *S.E.C. v. Sloan*, 369 F. Supp. 996, and in the parallel administrative proceeding, in response to claims by the S.E.C. staff that Respondent's books and records "were not properly maintained," Respondent made numerous offers to produce his books and records at the offices of the S.E.C. for inspection by members of the S.E.C. staff superior to Bruder and Kanoff, the two staff investigators who examined Respondent's records in his office, and the S.E.C. staff refused to agree to an inspection. On January 18, 1971, Respondent brought all of his records to the offices of the S.E.C. and they were examined by Alan Rashes, the staff attorney then assigned to the case, but the S.E.C. subsequently refused to acknowledge that this examination had taken place. See e.g. *In the Matter of Samuel H. Sloan, supra*, 6 SEC Docket 772, 774 where the S.E.C. found that on January 18, 1971 Respondent "submitted something." Subsequently, in January, 1976 when Respondent was found in "contempt of court" for failing to produce his books and records "in an easily accessible place," Respondent's mother, who had physical possession of the records (Respondent was in Iceland at the time), called Thomas L. Taylor III, the attorney in the S.E.C. Office of General Counsel assigned to the case, and offered to produce the records for inspection by the S.E.C. staff but Mr. Taylor, on behalf of the S.E.C., refused to agree to an inspection. Again, the S.E.C. staff has since refused to acknowledge that this conversation took place (and Mr. Taylor has since left the S.E.C.). There were obvious strategic reasons for these decisions. Had a supervisory person in the S.E.C. Division of Broker-Dealer Inspection examined Respondent's books in the period 1971-1973 and found, contrary to his subordinates, that Respondent's books and records were properly maintained, the S.E.C. staff would have been forced to abandon its prosecution of Respondent, something it clearly did not wish to do. Similarly, had Mr. Taylor, in January, 1976, agreed to an inspection of Respondent's books and records by the S.E.C. staff, the S.E.C. would have been forced to discontinue contempt proceedings against Respondent and in turn the three appeals taken by Respondent to the court of appeals would not have been subject to dismissal and the injunctions obtained by the S.E.C. might have been reversed. (The S.E.C. staff ultimately did examine Respondent's records but only after having been ordered to do so by Judge Ward and only then after Respondent had spent two days in jail.) Thus, there is reason to believe that the S.E.C. might refuse to examine the actual stock certificates owned by Respondent, for strategic reasons, although in this Court the S.E.C. is required to act through the Office of the Solicitor General, which has a better reputation for integrity than the S.E.C. staff.

argued before this Court.[38] The securities in question form a stack several feet high.

Included as Appendix E to this brief is a list of security positions held by Respondent on November 18, 1976, the date of the decision of the court of appeals. Appendix E also gives the date the security was suspended, if it has ever been the subject of an S.E.C. suspension. A remarkable

38 The procedure of producing physical items, in this case stock certificates, may seem unorthodox, but Respondent has used it before. In the first district court case, in view of the claim by the S.E.C. staff that Respondent's records were "not available for inspection," Respondent produced all of his records in court and they remained on his table throughout the duration of the trial. In spite of the S.E.C. staff's specious claim that they were eager to examine Respondent's records, they made no attempt to do so. Most of these records were then offered into evidence by Respondent, and the S.E.C. staff still did not examine them even then. To this day, these records are in the custody of the Clerk of the Southern District of New York, and, as far as Respondent is aware, have never been examined by the S.E.C. (Inexplicably, although he acknowledged the presence of these records in the courtroom (Trial Transcript p. 293), Judge Ward found that "at no time since August 16, 1973, has Sloan made his books and records available for inspection by the Commission," 369 F. Supp. at 999, ¶ 20 even though Respondent, through counsel, had offered to turn his records over to the S.E.C. in toto, and no testimony or evidence had been offered by the S.E.C. at trial in support of Judge Wards' finding). Similarly, at the oral argument of the instant case before the court of appeals, Respondent produced for inspection by the court his 13 shares of Canadian Javelin Ltd., in order to prove that he owned the actual securities rather than a mere photocopy (App. 179-181).

thing about this list is the number of securities held by Respondent which at some time have been the subject of an S.E.C. suspension. An explanation for this can be found from the circumstances which often arise as the result of a trading suspension. As noted previously, Respondent at one time or another was a market maker in approximately one thousand securities. Normally, whenever Respondent stopped making a market in a security, he would sell out whatever position he held. However, in cases where the S.E.C. suspended trading in the security, Respondent had no chance to sell and was left holding whatever inventory he happened to have on hand at the time the suspension was announced. Moreover, after the termination of the suspension, Rule 15c2-11, which has been discussed previously, came into play. In order for a previously suspended security to start trading again, it is necessary for a broker to file a Form 211. Even if all of the information required by Form 211 is readily available, the vast majority of brokers are unwilling to risk the potential liability entailed in the filing of the form. In addition, many of the securities held by Respondent were suspended by the S.E.C. from trading for the very reason of a delinquency in a 10-K filing. Because of the S.E.C.'s application of Rule 15c2-11, which is at variance with what the rule itself says, unless and until a corporation is up to date in filing its 10-K reports, the filing of a Form 211 will not be accepted by the S.E.C. Most of the corporations suspended by the S.E.C. for delinquency in filing a 10-K report have never brought their 10-K filings up to date and the S.E.C. has not allowed trading in their securities to resume for that reason, even though in all cases the order suspending trading expired long ago. Therefore, Respondent has never had the opportunity to sell these securities and he continues to own them to this day.

This does not entirely explain the fact that Respondent is a stockholder in so many corporations whose

securities have been suspended from trading by the S.E.C. Many securities presently held by Respondent were suspended from trading by the S.E.C. before Respondent purchased them, such as Baylock Instrument Corp., which was suspended from trading by the S.E.C. in 1965, years before Respondent was even in business. However, it should be noted that there are at present an average of 10,000 securities quoted daily in the pink sheets, which includes listings for securities which are traded in the "third market" and are primarily traded on a national securities exchange.[39] The S.E.C. states in its petition (Pet. 9) that subsequent to the 1964 amendments to the Securities Exchange Act and prior to the decision of the court of appeals dated November 18, 1976, the S.E.C. used the suspension power with respect to a total of 941 securities. Even not considering the fact that when the S.E.C. suspends trading, it normally suspends trading in "all securities" of the offending corporation, and thus many of these 941 suspensions resulted in a suspension of all common, preferred, warrant, debenture and other issues, the S.E.C. has suspended trading in 9.41% of all over-the-counter securities. Of course, this is by no means a precise calculation, since many securities which have in the past been suspended from trading by the S.E.C. may have since ceased to be outstanding as a result of a merger, liquidation, bankruptcy reorganization, or any one of a number of other possible events. However, the point is that assuming even that the securities owned by Respondent con-

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39. Respondent obtained the figure of 10,000 securities from Ed Lubensky, Head of the Library Department, and from Dave Burnett, Vice President of the National Quotation Bureau, Inc. The figure of 10,000 as being the number of securities listed in the daily pink sheets can also be found in numerous published sources. In reaching this number, if, for example, a corporation has an issue of common, an issue of preferred, and an issue of warrants outstanding, this is treated as three securities listed in the pink sheets. Thus, the number of corporate *issuers* which have securities listed in the pink sheets is significantly less than 10,000.

stituted a random sample of all over-the-counter securities, a substantial percentage of them would at some time in the past have been suspended from trading by the S.E.C.

As noted previously, Appendix E is a list of security positions held by Respondent on the date of the decision of the court of appeals and either then or now in his possession. The choice of the November 18, 1976 date seems most appropriate, since the S.E.C.'s argument to this Court is that the decision of the court of appeals was erroneous because on the date of that decision, this case was moot. Of course, this perceived error in the decision of the court of appeals is based upon facts which the court of appeals did not and could not have known. The S.E.C. did not question the number of securities held by Respondent when the case was pending before that court and did not suggest that Respondent should prove the number of securities he owned at that time. One reason for this is that the S.E.C. already knew that Respondent owned a large number of securities. Of course, it did not know the exact number of securities owned by Respondent on a particular date, although it could easily have ascertained this information, but it did know that Respondent owned an exceptionally large portfolio of securities. As Respondent stated in his affidavit to the court of appeals (App. 153):

> "I also own securities of more than 200 corporate issuers. On February 4, 1976 Ralph Pernick and Alexander Worobec of the S.E.C. staff examined the stock certificates representing my ownership in these securities."

In addition to that, Respondent, over the years, has submitted a large number of trial balances and capital computations to the S.E.C., many of which are included in the record of the administrative proceeding before the S.E.C. which is, or should be, included in the record of this appeal, and each of these trial balances and capital

computations has contained a list of securities owned by Respondent. Moreover, in the course of various broker-dealer inspections of Respondent, members of the S.E.C. staff have conducted several "box counts" of the securities owned by Respondent. Thus, the S.E.C. staff knew that Respondent owned a large number of securities and that raising an issue in the court of appeals with regard to the number of securities owned by Respondent was not going to help the position of the S.E.C. Of course, it should be pointed out that the argument contained on pp. 17-19 of the S.E.C.'s brief in this Court was apparently conceived by the Solicitor General's office and the Solicitor General does not have the first-hand knowledge that the S.E.C. has of the number of securities owned by Respondent.

The list of securities included in Appendix E to this brief would not be the same as a list of securities held by Respondent on the date of his affidavit to the court of appeals nor the list of securities held by Respondent on the date he filed his brief in response to the petition for writ of certiorari in this Court, nor presumably will be the same as the list of securities held by Respondent on the date this appeal is argued and on the date this appeal is decided by this Court. This is not surprising since Respondent is a professional securities trader and his securities portfolio is subject to frequent changes. However, considering the list which is included in Appendix E, a number of observations can be made. The list contains securities of a total of 150 corporate issuers. In several cases Respondent owns more than one security of the same issuer. Fifty-five of these corporate issuers have had all of their securities suspended by the S.E.C. at one time or another since the 1964 amendments to the Securities Exchange Act. Although Appendix E does not indicate this, twelve of

these have been the subject of a series of consecutive trading suspension orders.[40] Of the securities listed in Appendix E, only one is listed on the New York Stock Exchange, that being Playboy Enterprises, Inc. Two are listed on the American Stock Exchange, Applied Devices Corp. and Canadian Javelin Ltd. However, Respondent sold his shares in Applied Devices Corp. in early 1977, shortly after that security resumed trading on the American Stock Exchange after having been suspended from trading on that exchange for almost six years. Canadian Javelin Ltd., while it has continued to be listed on the American Stock Exchange, has been suspended from trading on that exchange since April 30, 1975, one day after the S.E.C. invoked its trading suspension.

On page 19, n. 8 of its brief, the S.E.C. proffers a mathematical formula with regard to the probability of a future trading suspension adversely affecting Respondent. Respondent concedes the mathematical accuracy of this formula, but does not concede that the arguments advanced by the S.E.C. are properly raised for the first time at this late date. At any event, Respondent is prepared to argue that even under the premises upon which this mathematical formula is based, this case is not moot. To begin with, it should be pointed out that according to the S.E.C.'s calculation, there is a probability of "approximately .740" that one of the securities held by Respondent will be subject to consecutive trading suspension orders within the next five years. This would seem to constitute a virtual admission that this case is not moot under

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40. These are Applied Devices Corp., Canadian Javelin Ltd., Electrospace Corp., Four Seasons Nursing Centers of America, Inc., Franklin National Bank, Lilac Time Inc., Old Town Corp., Phoenix Inc., The Seabord Corp., Topper Corp., Triex International Corp., and Baylock Instrument Corp. Since the date of the decision of the court of appeals, Respondent has sold his stock in Applied Devices Corp.

Roe v. Wade, 410 U.S. 113, 125 (1973). Recognizing this, the S.E.C. claims it needs to make a "more accurate count" of the securities held by Respondent. Accordingly, it is appropriate to substitute a few numbers into the mathematical formula offered by the S.E.C. in order to determine how the substitution of these numbers is likely to affect the computation of the probability that one of the securities held by Respondent will be subject to a suspension order or a series of consecutive suspension orders at some time within the reasonably immediate future.

First, it should be noted that the numbers suggested by the S.E.C. are wrong. It claims that "the Commission's staff has estimated that between 25,000 and 30,000 corporations have publically traded stock." No authority is given for this self-serving statement. Respondent regards himself as something of an expert in obsolete and obscure securities, and must state that the numbers suggested by the S.E.C. are high by any reasonable calculation. As noted previously, there are approximately 10,000 securities listed daily in the pink sheets, and that includes in many cases different issues of securities by the same corporate issuer. The National Stock Summary, which is an authoritative volume published by the National Quotation Bureau, Inc., lists approximately 20,000 securities. However, this volume lists all securities which have been quoted at any time in the past seven years and includes many securities which have been the subject of a name change, have been merged out of existence, or called or are no longer outstanding for any one of a number of reasons. Indeed, with the exception of securities which have been at one time or another suspended from trading by the S.E.C., in which case the S.E.C. has invoked Rule 15c2-11 to prevent trading in most of these securities from resuming, the vast

majority of all securities which have traded during the past seven years and which are still in existence, are listed in the daily pink sheets. The most recent issue of the *Directory of Companies Required to File Annual Reports With the Securities and Exchange Commission Under the Securities Exchange Act of 1934*, which is dated June 30, 1977 and is published by the Superintendent of Documents, lists 9,447 companies required to file reports. Even this list includes many corporations which do not have equity securities trading in public markets. In short, the number of "corporations who have publically traded stock" is much less than what the S.E.C. claims it to be for the purposes of this appeal.

In order to arrive at the inflated figures set forth in its brief, the S.E.C. has no doubt included the large number of banks which have stock outstanding. The *E-Z Directory of Brokers and Banks* sells a list of 15,500 banks in the United States. Almost every country bank in the United States has publicly traded stock, in the sense that members of the local community own shares in the bank and buy and sell them from time to time. Many larger banks are listed in the pink sheets but most of these are regarded as inactive issues. It seems virtually certain that at least half of the "25,000 to 30,000 corporations" that have publicly traded stock are banks. The problem with including banks in the list of all publicly traded corporations is that the S.E.C. does not have the authority to suspend trading in a security issued by a bank. This is because §12(i) of the Securities Exchange Act, 15 U.S.C. §78*l*(i), vests that authority in the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, or the Federal Home Loan Bank Board, depending on the nature of the bank.[41] Thus, the universe of "30,000 publically traded

41. In a recent celebrated instance, the Comptroller of the Currency suspended trading in the National Bank of Georgia. On p. 13, n. 25 of the S.E.C.'s petition for rehearing in the court of appeals, it states, "The Comptroller of the Currency issued orders which continuously suspended trading in the stock of Mercantile National Bank of Atlanta, Georgia, from May 13, 1976, to July 23, 1976 (31 Fed. Reg. 20592 (May 19, 1976); 41 Fed. Reg. 29436 (July 16, 1976)). The Federal Deposit Insurance Corporation has suspended trading in the securities of Farmers Bank of the State of Delaware from March 9, 1976, through June 15, 1976 (41 Fed. Reg. 10713 (March 12, 1976); 41 Fed. Reg. 23228 (June 9, 1976)), and in the securities of the Unity State Bank of Dayton, Ohio, from July 7, 1976, through July 26, 1976 (41 Fed. Reg. 28583 (July 12, 1976); 41 Fed. Reg. 30213 (July 22, 1976))."

issues" posited by the S.E.C. in its brief is much too large and the actual number of publically traded issues which might be the subject of an S.E.C. trading suspension is almost certainly no larger than 10,000 or 15,000.

The S.E.C. also relies on the assertion that it has issued consecutive suspension orders suspending trading in an average of twenty securities during the past twelve years. However, many of these securities were suspended more than once, a prime example of this being Canadian Javelin Ltd., which has been the subject of consecutive trading suspension orders on four distinct occasions. In addition, many securities were suspended from trading for a period of more than one year, the best known example of this being Continental Vending Machine Corp., which was suspended from trading for a period of more than 13 years. Thus, although it is presumably true that the S.E.C. has issued consecutive trading suspension orders with respect to 234 different corporate issuers during the past twelve years as it claims, it is not correct simply to divide the number 234 by 12, which equals 19.5, rounded off by the S.E.C. to 20, to arrive at the number of securities which are the subject of a consecutive series of trading suspension orders within the average year. In addition, the S.E.C. treats a series of orders as though it were one order. If one calculated the number of consecutive trading suspension orders issued by the S.E.C., it would

be much higher. Continental Vending Machine Corp. alone was the subject of 484 separate trading suspension orders. Canadian Javelin Ltd. has been the subject of a total of 100 separate orders during the four periods in which it has been suspended from trading. Furthermore, it is not correct simply to count the number of securities which have the subject of a series of consecutive trading suspension orders. In the instant case, Respondent challenged the validity of the orders suspending trading in Canadian Javelin Ltd. on a number of grounds, just one of them being that the issuance of a series of consecutive trading suspension orders was illegal. Respondent also contended, *inter alia*, that there was no substantial evidence in the record to support the trading suspension orders and hence they must be set aside. In resolving the question of mootness, this Court is determining whether the court of appeals had jurisdiction to review the trading suspension orders generally, not merely with respect to the one issue on which Respondent prevailed. If this Court accepts the argument of the S.E.C. that only the history of prior consecutive trading suspension orders should be considered in determining whether this case is moot, the result will be that anyone seeking to challenge the validity of a single trading suspension order on the grounds of insubstantiality of the evidence or on any other grounds except the grounds on which Respondent prevailed in the instant case, would be foreclosed by the S.E.C.'s mootness argument. The S.E.C. states that it suspended trading in securities of a total of 941 corporate issuers during the twelve years preceding the decision of the court of appeals and that is the number of securities which should be considered in a determination of the probability that one of the securities owned by Respondent or one in his position will be the subject of a future trading suspension order.

With these considerations in mind, it is appropriate to insert a few numbers in the mathematical formula set

forth in the S.E.C.'s brief. It should be noted that the S.E.C. always takes the higher number or the number most favorable to the S.E.C. For example, when it estimates that there are between 25,000 and 30,000 corporations that have publicly traded stock, it posits a "universe of 30,000 publicly traded issues." However, the burden is on the S.E.C. to show that this case is moot and not on Respondent to show that this case is not moot, and therefore the S.E.C. should be required to take the lower rather than the higher figure. Thus, assuming that there are between 10,000 and 15,000 corporations with publicly traded stock, it is appropriate to assume that there are 10,000 corporations with publicly traded stock and that Respondent owns securities issued by 150 of these corporations. Finally, the number of securities which have been suspended during the average year by the S.E.C. for the twelve years prior to the decision of the court of appeals is 941 divided by 12, which is 78.4. However, during the four years immediately preceding the decision of the court of appeals, the S.E.C. engaged in a rapidly accelerating program of trading suspensions and thus it is appropriate to consider the number of securities suspended from trading by the S.E.C. during this period, particularly since during the early years trading suspensions were relatively rare.[42] In the four years preceding the decision of the court of appeals, not counting the period between the time of the decision of the court of appeals and the end of 1976, the S.E.C. suspended trading in all securities of a total of 615 corporate issuers, or an average of 153.75 per year.[43] Rounding this off to 154, one finds

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42. In 1964, the S.E.C. suspended trading in only one security, in 1965 only nine, and in 1966 only ten. In contrast, in 1973 the S.E.C. suspended trading in 236 securities, in 1974 in 168, in 1975 in 97, and in 1976, prior to the decision of the court of appeals, in 114. The S.E.C. suspended trading in another 16 securities in 1976 after the decision of the court of appeals.

43. According to Respondent's calculations, the S.E.C. suspended trading in securities of a total of 858 corporate issuers between 1964 and 1976. The

that under the formula in footnote 8 of the S.E.C.'s brief, a = 10,000 - 150 = 9,850, b = 150, and n = 154. Substituting these numbers into the S.E.C.'s formula, we find that P = .904. In other words, there is a more than 90% probability that trading will be suspended in one of the securities owned by Respondent in a given year, assuming that the trading suspensions continue at the rate prevailing prior to the decision of the court of appeals. This calculation conforms with actual experience because it can be seen from Appendix E that even not considering the trading suspensions of Canadian Javelin Ltd., during every year from 1970 through 1976 with the exception of 1975, at least one of the securities owned by Respondent was the subject of a trading suspension order. Furthermore, again not counting Canadian Javelin Ltd., during the years 1970, 1972, 1973, and 1974 at least one security owned by Respondent was the subject of a series of successive trading suspension orders. That is four out of seven years although according to the calculations of the S.E.C., the probability is only .236 that this will happen in a given year. Taking the more realistic figure of .904 as the probability of a security owned by Respondent being the subject of a trading suspension order during a given year and substituting that into the second formula proffered by the S.E.C., one comes up with a probability of .9999919 that one of the securities owned by Respondent will be the subject of a trading suspension order within the next five years. This is precisely what Respondent said, without the benefit of these mathematical computations, in his affidavit to the court of appeals when he stated (App. 153): "An elementary knowledge of probability theory establishes that based upon this, the likelihood is miniscule

brief for the S.E.C. states that the number is 941. It may be that the list provided by the S.E.C. to Respondent, as well as the list which is included in the appendix (App. 183-211), is not complete.

that the S.E.C. will never again suspend trading in any security in which I have an interest."

Of course, the S.E.C. does not accept the numbers or the reasoning just set forth. However, even using the S.E.C.'s numbers, fallacious as they may be, is not helpful to the S.E.C.'s position. Taking the equation offered by the S.E.C. and accepting the S.E.C.'s number of 30,000 publically traded issues and the number of 20 as the number of securities that will be subjected to consecutive suspension orders in the average year and reducing the number of securities owned by Respondent from 400 to 150, and again calculating the results, one finds that a = 29,850, b = 150, and n = 20, and that P = .096. This works out to a probability of .396 that one of the securities owned by Respondent will be the subject of series of successive trading suspension orders within the next five years.[44] Admittedly, this figure indicates a less than 50% chance but even this establishes a sufficiently substantial likelihood to preclude a claim by the S.E.C. that the case is moot. For example, published statistics indicate that nowadays the average American woman of childbearing age bears 1.9 children. From this, plus a consideration of other relevant factors, one might reasonably conclude that the average woman seeking an abortion has a less than 50% chance of becoming pregnant in the future. Nevertheless, this Court has invariably held that actions brought by pregnant women seeking abortions do not become moot nine months later and this Court has never seen the need to make the type of mathematical computations as to the probability of future pregnancy which are comparable

44. Respondent has made these calculations with an electronic calculator which does not have the capacity to handle some of the large numbers involved in these computations. Therefore, these computations may not be accurate to the last digit. However, using the same methods Respondent finds the figures given in the S.E.C.'s brief to be correct, at least from a mathematical point of view.

to those suggested in the brief by the S.E.C. In addition, it should be noted that the brief of the S.E.C. states (Brief pp. 18-19):

> "Moreover, application of principles of mathematical probability ideally would require information about the nature of respondent's portfolio. If the bulk of the securities respondent owns are listed on the New York Stock Exchange, or are of other well established and widely held corporations (such as many banks and insurance companies whose shares are traded over the counter), the practical likelihood of a suspension order may be small indeed since suspension of trading in such securities is extremely rare. On the other hand, if respondent's securities are predominantly those of less established issuers, there could well be a substantial probability that one of them will be subject to consecutive orders suspending trading within the next few years."

It so happens that the statement by the S.E.C. that the suspension of trading in securities of "well estblished and widely held corporations . . . is extremely rare," is false. On November 20, 1974, the S.E.C. suspending trading in American Telephone & Telegraph Co., Securities Exchange Act Release No. 11111, 5 SEC Docket 508 (November 20, 1974) (App. 185), and on January 24, 1975, the S.E.C. suspended trading in International Business Machines Corp., Securities Exchange Act Release No. 11208, 6 SEC Docket 189 (January 24, 1975). American Telephone & Telegraph Co. is the most widely held publicly traded corporation in the United States and International Business Machines Corp. is the largest corporation in the United States in terms of market value of publically held securities outstanding. Nevertheless, since it happens that the securities held by Respondent are "predominantly those of less established issuers", Respondent will not quarrel with this particular argument presented by the S.E.C. since the S.E.C. apparently is

prepared to admit that this circumstance establishes that there is "a substantial probability that one of them will be subject to consecutive orders suspending trading within the next few years."

E

For all of the foregoing reasons it is abundantly clear that this case is not moot. The diverse claims the S.E.C. has made in an effort to get this Court and the court of appeals to declare this case to be moot all boil down to the assertion that when the S.E.C. voluntarily ceased issuing the series of orders suspending trading in Canadian Javelin Ltd., the case became moot. This argument is foreclosed by this Court's decision in *United States v. W.T. Grant Co.*, 345 U.S. 629, 632 (1953) which held that "voluntary cessation of allegedly illegal conduct . . . does not make the case moot" because to accept this argument would be to give the S.E.C. "a powerful weapon against public law enforcement" and the S.E.C. would be "free to return to [its] old ways. This, together with a public interest in having the legality of the practices settled, militates against a mootness conclusion." *Id.* Even in cases such as *Roe v. Wade, supra*, and *Sosna v. Iowa*, 419 U.S. 393, 399-403 (1975), where the plaintiff lost all interest in the outcome of the controversy shortly after the action was commenced, this Court has refused to declare the case to be moot. The case presented here is considerably less susceptible to a mootness argument since at present Respondent undoubtedly has a substantial interest in the outcome of this case. Indeed, were it not so, Respondent would not have been in a position to bear the enormous effort and expense required to appear before this Court and file this brief.

III

THE ISSUANCE OF A SERIES OF SUCCESSIVE TEN-DAY TRADING SUSPENSION ORDERS WHICH HAVE THE EFFECT OF SUSPENDING TRADING IN A SECURITY FOR A PERIOD EXCEEDING TEN DAYS IS A VIOLATION OF SECTION 12(K) OF THE SECURITIES EXCHANGE ACT

Section 12(k) of the Securities Exchange Act, 15 U.S.C. §78*l*(k), authorizes the S.E.C. "summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days . . ." The S.E.C. contends that when Congress included the words "for a period not exceeding ten days" in the statute, it intended to give the S.E.C. the authority to suspend trading in a security for as long a period of time as the S.E.C. deems appropriate. Although the S.E.C. has never contended that this was the intent of Congress at the time it originally enacted the Securities Exchange Act in 1934, it claims that the failure of Congress to amend the statute during the intervening 44 years to even more expressly limit the suspension of trading in a security to "a period not exceeding ten days," establishes that Congress has acquiesced to the assumption of power by the S.E.C. to suspend trading in a security for longer time periods. This contention must be rejected for a number of reasons.

A

The authority to suspend trading in a security was originally given to the S.E.C. in 19(a)(4) of the Securities Exchange Act, 15 U.S.C. §78*s*(a)(4). Section 19(a)(4) was not included in the original drafts of the Securities Exchange Act but was added to the House version on May 4, 1934, 78 Cong. Rec. 8116 (1934), and to the Senate version on May 17, 1934. (In the House version, the provision was

included as §18(a)(4) of the Securities Exchange Act.) There was no debate concerning §19(a)(4) in either the House or the Senate. The only debate concerning §19 occurred on April 30, 1934 and dealt with §19(b). 78 Cong. Rec. 8086-8093 (1934). Nevertheless, the purpose for which the trading suspension power was intended is obvious from its placement in the statute. This is explained in both the Senate and House reports. Senate Report No. 792, 73rd Cong., 2d Sess. 21 (1934) states:

> "Section 19. Disciplinary Powers over Exchanges.
>
> Subsection (a) authorizes the Commission when it deems such action necessary (1) to suspend for not more than 12 months or withdraw registration of an exchange which has violated the act or the rules and regulations thereunder or has failed to take adequate steps to enforce the same; (2) to suspend for not more than 12 months, or to withdraw the registration of a security of, an issuer who has failed to comply with the act or rules and regulations thereunder; (3) to suspend for not more than 12 months or expel a member or officer of an exchange who is guilty of a violation or of aiding a violation by acting for a person who, he has reason to believe, is engaged in a violation; and (4) summarily to suspend all trading in any registered security for a period not exceeding 10 days or with the approval of the President of the United States summarily to suspend all trading on a registered exchange for not more than 90 days. Orders issued pursuant to (1),(2), and (3) must be preceded by appropriate notice and opportunity for hearing; action under (4) is of an emergency nature and, therefore, may be exercised summarily."

With respect to its discussion of §19(a)(4), the language of the House report is identical. See House Report No. 1383, 73rd Cong., 2d Sess. 25. Thus, it is apparent that Congress included the trading suspension power in the Securities Exchange Act to enable the S.E.C. to bring about an immediate halt to the illegal or fraudulent sale of a security so as to give it time to institute

suit or administrative proceedings or take other appropriate action before the occurrence of further injury to the investing public. Unfortunately, the S.E.C. did not use the trading suspension power in the way in which it was intended. Instead of being used as a stop-gap measure, it has become a remedy of last resort. During the first ten years of its existence, the trading suspension power was not invoked at all. The brief the S.E.C. has filed in this Court (Brief, p. 33, n. 14) states that during this period the policy of the S.E.C. was to institute deregistration proceedings pursuant to §19(a)(2) of the Securities Exchange Act. It is noteworthy that it was during this period of time that Mr. Justice Douglas was Chairman of the S.E.C. and the S.E.C. never resorted to the use of a summary trading suspension order. The brief for the S.E.C. indicates that around 1944 the S.E.C. abandoned its use of the relatively cumbersome deregistration proceedings under §19(a)(2) of the Securities Exchange Act and began to make use of the more expeditious summary trading suspension power authorized by §19(a)(4) of the Securities Exchange Act. However, this statement is inaccurate as is shown *infra*. The article by Goldstein and Mangrino, *supra*, 15 N.Y.L. Forum at 657-673 provides a complete chronological list of all 146 trading suspensions from November 24, 1974 until August 1, 1969 and gives the number of all Securities Exchange Act releases issued in connection therewith and other information.

Although the S.E.C. adopted in 1944 the practice of suspending trading in a security for a period exceeding ten days by the use of successive ten-day trading suspension orders, it was apparently prepared at one time to admit forthrightly that Congress had not expressly authorized this practice. For example, on April 16, 1959, the Chairman of the S.E.C., Edward N. Gadsby, addressed the American Society of Corporate Secretaries as follows

(Gadsby, "Current S.E.C. Legislative and Related Problems," 189 *Commercial &Financial Chronicle* 1863, 1903 (1959), cited in II Loss, *Securities Regulation* 184-185 (2d ed. 1961):

> "We have further recommended that Congress extend the Commission's existing authority summarily to suspend a security from trading on a national securities exchange for a period not exceeding 10 days when necessary in the public interest. Lately, this grant of power has been used to keep in effect a suspension of trading pending final disposition of delisting proceedings under Section 19(a)(2) of the Act. It has been useful where it has appeared that the current information available to the public concerning a security is misleading or is inadequate to permit investors to make informed judgments with respect to its purchase or sale, and it appears that the additional necessary information cannot be obtained and made available to investors until all the facts are elicited through the 19(a)(2) proceedings. These proceedings, because of their complexity often cannot be completed within a single 10-day period, and it has been found necessary to renew the suspension for successive 10-day periods. No express authority for such action is contained in Section 19(a)(4), and its proposed amendment codifies the current interpretation under which the Commission has acted.
>
> The present statutory power of suspension of trading applies only to transactions on a national securities exchange and does not explicitly extend to securities traded only in the over-the-counter markets. Among the Commission's recommendations is included a new Section 15(c)(4) which will give to the Commission comparable statutory power summarily to suspend trading in a security on the over-the-counter markets.
>
> The Commission has also proposed a new section which would authorize the Commission, in its discretion, to institute action on behalf of the United States to recover $100 per day in civil penalties for failure to file any required information or reports. A similar provision now

covers delinquencies in filing reports under Section 15(d), and its extension to other reports is designed further to strengthen the hand of the Commission in enforcing timely filings. The present remedies, principally that of mandatory injunction, have shown themselves to be effective only after substantial additional delay and after cumbersome technical litigation."

From this it is clear that the Chairman of the S.E.C. admitted that there was no authority to suspend trading for a period exceeding ten days under §19(a)(4) of the Securities Exchange Act and, accordingly, the S.E.C. had submitted a "proposed amendment which codifies the current interpretation under which the Commission has acted." However, this proposed amendment failed to pass in Congress. The proposed amendment to §19(a)(4), (H.R. 2480), provided the following (Hearings before a Subcommittee of the House Committee on Interstate and Foreign Commerce, 86th Cong., 1st Sess., on Securities and Exchange Commission Matters 92):

"Sec. 20. Paragraph (4) of subsection (a) of section 19 of the Securities Exchange Act of 1934, as amended, is amended to read as follows:

'(4) And if in its opinion the public interest so requires, summarily to suspend trading on any national securities exchange in any security registered pursuant to any provision of this title, for one or more periods no one of which shall exceed ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for one or more periods no one of which shall exceed ninety days. No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security, in which trading is so suspended pursuant to any provision of this clause (4), on a national securities exchange or otherwise."

At the same time, the S.E.C. proposed a new §15(c)(4) of the Securities Exchange Act which provided (*Id.* at 91-92):

"Sec. 15. Subsection (c) of section 15 of the Securities Exchange Act of 1934, as amended, is amended by adding the following new paragraph:

'(4) If in its opinion the public interest and the protection of investors so requires [sic], the Commission is authorized summarily to suspend trading, otherwise then on a national securities exchange, in any security (other than an exempted security) for one or more periods no one of which shall exceed ten days. No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended, otherwise than on a national securities exchange.'

The statement by S.E.C. Chairman Gadsby, who was accompanied by the other four commissioners as well as by future Commissioner Cohen and present Commissioner Loomis among others, *Id.* at 107, to the House Subcommittee as to the reasons for the proposed amendments, explained (*Id.* at 161-162, 163):

"Section 15—Extension of the Commission's authority to suspend trading to the over-the-counter markets

Present law.—Section 19(a)(4) authories [sic] the Commission, under certain stated conditions, summarily to suspend trading, for specified periods, in any security registered on a national securities exchange.

Problem.—Section 19(a)(4) applies only to trading on a national exchange and the Commission has no comparable statutory power as to securities traded only in the over-the-counter market.

Remedy in the bill.—It is proposed to add a new section 15(c)(4) which will grant the Commission authority summarily to suspend trading in a security in over-the-counter markets similar to the authority to suspend trading on an exchange granted in the proposed amendment to section 19(a)(4). See section 20 below."

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Sections 19 and 20—Expansion and clarification of the Commission's authority to suspend trading in any registered security on a national securities exchange

Present law.—Section 19(a)(2), which empowers the Commission, after opportunity for hearing, to deny, suspend, or withdraw the registration of a security on a national exchange, does not authorize the Commission to suspend trading in a security which still retains its registered status. Section 19(a)(4) authorizes the Commission, under stated circumstances, summarily to suspend trading on a national exchange in any registered security for a period not exceeding 10 days, or, with the approval of the President, summarily to suspend all trading on any national exchange for a period not exceeding 90 days.

Problem.—(1) During the pendency of proceedings under section 19(a)(2) to determine whether to deny, suspend, or withdraw the registration of a security on a national exchange, the Commission has exercised its summary power to suspend trading under section 19(a)(4). Since this power to suspend is limited to a period of 10 days, the Commission has followed the practice of issuing a series of consecutive orders under section 19(a)(4); but this practice has required a new determination every 10 days of the necessity of continuing the suspension under the standards of that section. Such periodic review and series of orders should be unnecessary to suspend trading during the course of a proceeding under section 19(a)(2).

(2) Generally, the power under section 19(a)(4) summarily to suspend trading in a particular security has been exercised where sudden changes of circumstances make it appear that the information available to the public about a

security is misleading or inadequate to permit investors to make an informed judgment with respect to the purchase or sale of the security, so that there is a possibility for fraud, and it appears that the additional necessary information can be obtained and made available to investors. Sometimes the necessary information cannot be obtained and made available in the 10-day period, and the Commission has had to renew the suspension for one or more additional periods not exceeding 10 days. However, section 19(a)(4) does not expressly provide such authority.

Remedy in the bill.—(1) The proposed amendment to section 19(a)(2) would eliminate the necessity of resorting to a series of successive 10-day suspensions under section 19(a)(4) during the pendency of a proceeding under section 19(a)(2), and would empower the Commission temporarily to suspend trading in a security pending determination of a proceeding under section 19(a)(2).

(2) The proposed amendment to section 19(a)(4) would codify the Commission's interpretation that it has the power to renew temporary suspensions for one or more additional periods not exceeding 10 days each."

As noted previously, these proposed amendments were killed in 1959. After having suffered a resolute rebuff in its efforts to obtain express Congressional authorization for its practice of suspending trading for successive ten-day periods, the S.E.C. came back five years later with a proposal which would not alter in any way the existing language of the statute and merely suggested the enactment of a new §15(c)(5) which did nothing more than extend to over-the-counter securities the S.E.C.'s authority to suspend trading in exchange listed securities. The S.E.C. now contends in this Court that the enactment of §15(c)(5), which is identical in all pertinent respects to §19(a)(4) except that it deals with over-the-counter rather than listed securities, demonstrates Congressional acquiescence to the assumption by the S.E.C. of the power to suspend trading in a security for successive ten day

periods. The S.E.C. cites as primary authority for this contention a statement by the S.E.C. to a Congressional committee which said (Hearings on Investor Protection Before the Subcommittee of the House Committee on Interstate and Foreign Commerce, 88th Cong., 1st Sess. 219 (1963)):

> "Under Section 19(a)(4), the Commission has issued more than one suspension when, upon re-examination at the end of the ten-day period, it has decided that another suspension is necessary."

A reading of this sentence indicates that the S.E.C. was less than forthright. The sentence is ambiguous and can reasonably be interpreted to mean that the S.E.C. has on appropriate occasions issued as many as two consecutive trading suspension orders. This sentence says that the S.E.C. has issued "more than one suspension when . . . it has determined that another suspension is necessary." In short, the S.E.C. never advised Congress that in some cases it had suspended trading in a security for a year or more. Up until the time of the August 20, 1964 amendments to the Securities Exchange Act, the S.E.C. had invoked the trading suspension power with respect to securities of only 29 corporations, an average of less than one per year during the 30 years since the passage of the Securities Exchange Act and included in this are suspensions under §19(a)(2) rather than §19(a)(4). Thus, Congress cannot be expected to have had independent knowledge in 1964 of the S.E.C.'s practice of using the ten-day trading suspension power as a basis for suspending trading for much longer time periods since by then the S.E.C. had abandoned the forthrightness it displayed in 1959. However, assuming that a few members of Congress did read the statement of the S.E.C. and in addition realized that the S.E.C. had suspended trading for much more than one or even two ten-day periods, it cannot be

said that a majority of both the House and the Senate, in enacting the 1964 amendment, was aware of the S.E.C.'s practice in this regard and acquiesced to it through the passage of the 1964 amendments to the Securities Exchange Act. Indeed, it is more reasonable to assume that precisely the opposite was the case. The statement by the S.E.C. is contained in small type in the voluminous transcript of the subcommittee hearing which is more than a thousand pages in length. It is possible that some members of Congress read the entire transcript and noticed the obscure passage upon which the S.E.C. now places great reliance, but it can hardly be said that a majority of the Senate and a majority of the House was cognizant of what was involved and passed the 1964 amendments to the Securities Exchange Act in full awareness of the implications now suggested by the S.E.C.

This is further demonstrated by the fact that when the 1964 amendments were debated on the floor of the House and the Senate, there was no mention whatever of even the fact that the 1964 amendments would extend the trading suspension power to over-the-counter securities, see 110 Cong. Rec. 17914-17927, 18180-18194, 18377-18389 (August 4-6, 1964), except for one sentence devoted to this provision by Senator Williams, 110 Cong. Rec. 13836 (August 6, 1964). In contrast, all of the other features of the 1964 amendments were discussed in detail. *Id.* In spite of the scant attention given to the grant to the S.E.C. of the authority to suspend trading in over-the-counter securities, this proved to be the power most frequently invoked by the S.E.C. of all of the arsenal of weapons available to it for the obvious reason that of the remedies available to the S.E.C., the trading suspension power is unique in that an aggrieved party is not entitled to notice and the opportunity for a hearing or even to a statement of the reasons for the actions of the S.E.C. It is also significant that in the course of the debates on the House floor,

William L. Carey, the then Chairman of the S.E.C., wrote a letter to the House Committee Chairman which stated (110 Cong. Rec. 18181 (August 5, 1964)):

> "Mr. Farbstein asked whether the failure of a foreign corporation to register or file reports under the bill would automatically mean that american investors and broker-dealers could not trade in that corporation's stock. The answer is categorically 'No,' as is made clear in the House committee report."
>
> "Mr. Farbstein also asked what steps the SEC would take if a domestic company refused to register or file reports as required by the bill. As you pointed out on the floor yesterday, we could move administratively, obtain a mandatory injunction to compel compliance by the issuer, or in cases of willful violation, seek criminal sanctions. These are our traditional remedies; as you will remember, injunctive and civil contempt remedies were finally resorted to in the Goldfine matter. As is the case with foreign corporations, noncompliance with the reporting or registration requirements of the bill does not automatically freeze trading by shareholders or broker-dealers.

Thus, the Chairman of the S.E.C. categorically stated that the failure of a foreign corporation to file its required reports would not make it illegal for U.S. broker -dealers to trade in its securities. In addition, the Chairman of the S.E.C. never suggested that the trading suspension power might be invoked as a remedy if a corporation became delinquent in its required filings. Yet, in the case presented here, one of the reasons given by the S.E.C. for suspending trading in Canadian Javelin Ltd., a foreign corporation, thereby making it illegal for U.S. broker-dealers to trade in its stock, was a delinquency in filing its 10-K report (App. 110). It is apparent from the House debates and from the House Committee Report that had the House been informed that the S.E.C. would exercise the trading suspension power in this manner, the 1964 amendments would have been defeated. Therefore, contrary to the contentions of the S.E.C., the legislative history of the 1964 amendments to the Securities Exchange Act makes it abundantly clear that the exercise of the trading suspension power in the instant case was not in accordance with the expressed intent of Congress.

B

The S.E.C. argues in its brief (Br. 22):

> "First, the statutory phrase 'for a period not exceeding ten days' cannot mean that there may be only one period of suspension for each security. Thus, if the Commission detects a manipulative scheme affecting a security and therefore suspends trading in that security for ten days, it must retain the power to suspend trading anew if, 30 days later, it detects yet another manipulative scheme. The phrase 'for a period not exceeding ten days' therefore can only be read as limiting the duration of a single suspension order, not as limiting the amount of time that a particular security may be subject to suspension of trading.
>
> But if trading may be suspended anew upon the discovery of a second manipulative scheme 30 days later, surely a new suspension order also could issue if the second scheme were uncovered only ten days after the first had been detected, *i.e.*, upon the eve of the expiration of the first suspension order. No statutory purpose would be served by requiring an intervening period during which trading would resume, when discovery of a second manipulative scheme independently warrants a second suspension in the public interest and for the protection of investors. Thus the phrase 'for a period not exceeding ten days' cannot reasonably be construed as barring successive suspension orders in all circumstances."

The S.E.C. can already be seen to be making several leaps in logic. It argues, as it did in the petition for rehearing in the court below, that surely the fact that the S.E.C.

has at some time in the past suspended trading in a security does not give that security an immunity from a future trading suspension order. It then goes from that premise to the assertion that if the S.E.C. has the authority to issue a subsequent trading suspension order it must have the authority to issue a subsequent order even if the second order follows the first order by only ten days. The S.E.C. claims that in the situation where a "second manipulative scheme" has arisen, surely a second suspension order can be issued only ten days after the first suspension order. From this point it takes another giant step in logic in the following paragraph of its brief when it says that although "new evidence of manipulative activity justifies a successive suspension of trading . . . nothing in the statute compels the Commission to consider only new evidence in evaluating the needs of the investing public." Now a pattern can be seen to emerge. In the following sentence the S.E.C. completes the circle by saying:

> "[I]t is consistent with the statute for the Commission, even in the absence of new evidence of fresh manipulative activity, to determine that existing conditions are such that the public interest and the protection of investors require a renewed suspension of trading."

Ergo, argues the Commission, all that is needed is a "new determination of the public interest . . . before issuing a successive order suspending trading" and, therefore, it follows that the S.E.C. may suspend trading for an indefinite period of time for any reason whatever which it finds consistent with the "needs of investors", without giving notice or the opportunity for a hearing and without making any statement as to the reasons for the trading suspension. In short, says the S.E.C., when Congress authorized it to suspend trading in a security for a "period not exceeding ten days," it clearly intended to vest in the S.E.C. the arbitrary authority to do anything it feels like

when it comes to the matter of trading suspensions.

One of the many problems with the S.E.C.'s argument is that in the fifteen months which have passed since the decision of the court of appeals, no groundswell of support has developed for the S.E.C.'s view. Words have not been ringing through the halls of Congress denouncing the decision of the court of appeals and rallying support for an amendment to delegate expressly to the S.E.C. the power it claims it has always had. The Republic has not fallen. Indeed, noone seems to be concerned in the slightest about the perceived adverse consequences of the decision of the court of appeals, outside of the S.E.C. itself. For the past fifteen months the avenue has been open for the S.E.C. to request Congress to amend the statute and the S.E.C. has elected not pursue this route, for the obvious reason that Congress has never given and clearly has no intention of giving the S.E.C. the power to suspend trading in a security except "for a period not exceeding ten days."

An even more serious flaw in the S.E.C.'s argument concerns the premise of a "second manipulative activity." Remember that the S.E.C. uses this supposed "second manipulative activity" as a bridge to get from the Congressional authorization to issue a single trading suspension order to the possibility that two consecutive orders might be issued without violating the statute. However, one must wonder how this "second manipulative activity" could possibly arise. Supposedly, the S.E.C. suspended trading in the security at the outset because of a "first manipulative activity." Ten days have now passed and the S.E.C., for whatever reason, has not gone to court and has not instituted an administrative proceeding to bring to a halt this "first manipulative activity" and about this time "a second manipulative activity" comes to its attention. When did this "second manipulative activity" take

place? Was it during the first ten-day trading suspension period? How is that posssible, since trading was suspended during that time? If the trading suspension has been ineffective in halting the second manipulative activity, what reason is there to believe that a subsequent trading suspension will do any better? In short, a trading suspension brings to an end all trading activity, manipulative or otherwise. If it has failed to do so, a further trading suspension will not do more. Cf. "The very fact that a series of contempt citations has failed to check the defendant's contemptuous acts . . . demonstrates that another citation is unlikely to do so." *Codispoti v. Pennsylvania,* 418 U.S. 506, 521 (1974) (Marshall, J., concurring in part). In short, when the S.E.C. claims that "when the disruptive conditions persist for more than ten days, suspension of trading under Section 12(k) remains the only effective protection immediately available to investors" (Br. 31), it is suggesting a purely hypothetical situation which is unlikely ever to arise and which most particularly did not arise in the instant case.

C

This brings one to another thing wrong with the S.E.C.'s argument. The S.E.C. speaks of the necessity of issuing successive orders suspending trading in a security in some cases. It never argues that it was necessary for the S.E.C. to exercise this authority in the instant case. It never says that there was a "second manipulative activity" which justified a second order suspending trading in Canadian Javelin Ltd. and clearly it could not say that there was a "thirty-seventh manipulative activity" which justified the thirty-seventh order suspending trading. In fact, the S.E.C.'s brief does not state that there was even a "first manipulative activity". The S.E.C.'s brief does purport to set forth the reason for the first trading suspension. It states that the suspension was ordered "because the Royal Canadian Mounted Police had commenced an extensive investigation into alleged manipulation of CJL common stock on the American Stock Exchange and several Canadian stock exchanges" (Br. 3). However, on the next page of its brief, when it states that it issued a "second order suspending trading," it fails to state the reason for this second order. Apparently, having justified the first trading suspension order, the S.E.C. does not feel the need to give an explanation of the reasons for any of the thirty-six subsequent successive trading suspension orders. Of course, later in its brief, the S.E.C. implies that the reason for the second trading suspension order might have been evidence of a "second manipulative activity," or might have been something else. What the S.E.C. is really arguing is that the facts of the particular case before this Court and the reasons for these particular trading suspensions is unimportant to any decision this Court might make because the only issue before this Court is whether there are circumstances, however remote and dissimilar from the facts and circumstances of this case, where the S.E.C. would be justified in issuing a series of successive trading suspension orders. However, this Court has observed in an analogous context that "[o]ne to whose conduct a statute clearly applies may not successfully challenge it for vagueness." *Parker v. Levy,* 417 U.S. 733, 756 (1974). In the case presented here, the Congressional prohibition on suspending trading in a security for a period exceeding ten days clearly applies since there was no evidence of a "second manipulative activity" or of any other reason which might justify a subsequent trading suspension. In fact, an examination of the memoranda which the S.E.C. has proffered as the "record" of this case demonstrate that there was no new reason for the subsequent trading

suspension orders, assuming that there was a reason for even the first trading suspension order. Each trading suspension order is supported by a memorandum which supposedly provides the reason for the trading suspension. However, each memorandum has significant portions deleted by heavy black ink which prevented the court of appeals and now prevents this Court from having access to the full text of the memorandum. These black marks are indicated in the appendix filed by the S.E.C. in this Court by "•••". This is actually a misrepresentation of the appearance of these memoranda as will be seen from an examination of the memoranda themselves. In any event, since the full memoranda are not avilable, one must look to the portions of the memoranda which the S.E.C. will permit Respondent and the judges of this Court to read in order to attempt to divine the reasons for the trading suspensions. However, the memoranda dated May 23, 1975, May 30, 975, June 16, 1975 and June 24, 1975 (App. 20, 22, 24, 26) are identical in every respect except the date. Similarly, the memoranda dated July 21, 1975 and August 1, 1975 are identical (App. 34-35, 37-38), as well as the memoranda dated August 21, 1975 and September 2, 1975 (App. 42-43, 45-46), the memoranda dated September 11, 1975 and September 23, 1975 (App. 48-49, 51-52), the memoranda dated October 1, 1975 and October 10, 1975 (App. 54-55, 57-58), and the memoranda dated February 5, 1976, February 12, 1976, February 26, 1976 and March 4, 1976 (App. 89-90, 92-93, 95-96, 98-99). An examination of the original record filed by the S.E.C. demonstrates that not only are these memoranda identical but they are actual photocopies of each other. Apparently the S.E.C. simply typed up a standard memorandum, made several photocopies, and simply inserted a new date whenever it decided to renew its trading suspension. In short, all the arguments made by the S.E.C. concerning the possibility of a "new manipulative activity" which

might justify tacking a second trading suspension order on to a first order clearly do not apply to this case. Thus, it is apparent that the S.E.C. has violated §12(k) of the Securities Exchange Act by suspending trading in Canadian Javelin Ltd. for a period exceeding ten days without making a new determination that the suspension was necessary "in the public interest and for the protection of investors" and the arguments presented by the S.E.C. that there might exist circumstances under which a series of successive trading suspension orders would not be illegal would not affect the outcome of this case.

D

In its petition for rehearing in the court below the S.E.C. stated (Pet. for Rehearing, p. 3):

> "We wish to emphasize that the Commission does *not* contend that its ten-day summary suspension of trading in a stock may not be subject to court review by a person actually aggrieved. It does contend, however, that an order of the Commission renewing a summary suspension should be set aside only if it can be shown that the Commission abused its broad discretion."

Similarly, it is evident that the S.E.C. hopes that this Court will accept the proposition that there exist circumstances, however farfetched, under which a series of successive trading suspension orders would not be illegal and that this Court will vacate the decision of the court of appeals accordingly. The S.E.C. obviously realizes that all it need do is get its foot in the door in this matter, and it will be able to revert to its practice of issuing a series of successive trading suspension orders on a purely arbitrary basis and will at the same time for practical purposes be immune from any court challenge to the validity of these orders. If this Court accepts the proposition that an order

suspending trading in a security may only be reversed upon a finding that there has been "an abuse of discretion", it will follow that a trading suspension order will become for practical purposes unreviewable because it will always happen that by the time a person seeking to challenge the validity of a trading suspension order succeeds in obtaining judicial review by the court of appeals, that order will have expired, and even if the court of appeals vacates the order on the grounds of "abuse of discretion", the decision will not have any bearing on whatever trading suspension order happens to be outstanding at that time because even assuming that the S.E.C. has continued to issue successive trading suspension orders, the court of appeals will not have before it the record of the new trading suspension order and, therefore, will not be in a position to determine whether the issuance of the current order is an abuse of discretion. Thus, the circumstances could not arise where court of appeals would actually vacate an outstanding trading suspension order.

Moreover, even assuming *arguendo* that a court of appeals might decide that the equities of the situation require that the current trading suspension order be vacated as well, the S.E.C. would always be able to conjure up a "new" reason for suspending trading in the security and would be able immediately thereafter to issue a new trading suspension order and several more months would pass before a court of appeals could rule on the validity of that trading suspension order. All the while the S.E.C. would be able to issue successive trading suspension orders uninterrupted and the person seeking to challenge the validity of these orders would be expending his efforts and financial resources in the ever fleeting prospect of bringing about the renewal of actual trading. Unless this Court is prepared to conclude that Congress does not intend that there should be any Congressional or judicial restraint against the issuance by the S.E.C. of trading suspension

orders on a purely arbitrary basis, it must affirm the decision of the court of appeals to the extent that it enjoined the adoption and use of successive trading suspension orders.

E

In support of the proposition that when Congress included the words "for a period not exceeding ten days" in §12(k) of the Securities Exchange Act, it meant precisely the opposite of what it said, the S.E.C. cites as primary authority *Securities Regulation* by Professor Louis Loss. Since the S.E.C. itself has never articulated the reasons for which it suspends trading in a security, it quotes at length from what an outside observer such as Professor Loss found to be the reasons for trading suspensions. It ignores the fact that Professor Loss was writing in 1969, well before 1973 when the S.E.C. commenced its increasingly aggressive policy of suspending trading in securities. After devoting more than one page of its brief to quotations from Professor Loss, the S.E.C. asserts, "The Commission's long-standing and consistent construction is entitled to great weight."

It then cites a bunch of cases. However, none of the cases cited by the S.E.C. stand for the proposition which the S.E.C. is asserting in the instant case. Most of the cases cited by the S.E.C. held that an agency's interpretation *of its own regulations* was entitled to judicial deference. For example, in *Udall v. Tallman*, 380 U.S. 1, 16-17 (1975), this Court emphasized that there was "no statutory limitation involved". An exception to this is the most recent case cited by the S.E.C., *E.I. duPont de Nemours & Co. v. Collins*, 432 U.S. 46, 54-55 (1977). There, this Court dealt with the S.E.C.'s interpretation of a statute but the statute in question, namely §17 of the Investment Company Act of 1940, 15 U.S.C. §80a-17,

authorized the S.E.C. to find, after an administrative hearing, that the "evidence establishes that . . . the terms of the proposed transaction, including the consideration to be paid or recedived, are reasonable or fair and do not involve over-reaching on the part of any person concerned . . ." Congress also provided the S.E.C. with the standards upon which to base this determination. Thus, Congress expressly delegated to the S.E.C. the authority to make a determination, and that determination was clearly entitled to judicial deference. In the instant case, however, Congress has delegated no such authority. It has authorized the S.E.C. to suspend trading in a security for "a period not exceeding ten days." Clearly, Congress did not intend to delegate to the S.E.C. the authority to decide that it was appropriate to suspend trading in a security for a period longer than ten days. Indeed, to paraphrase what the S.E.C. stated in a related context, under the S.E.C.'s interpretation, the words "for a period not exceeding ten days" would be surplusage.[45]

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45. Under former §15(b)(7) of the Securities Exchange Act, 15 U.S.C. §78*o*(b)(7), the S.E.C. had the authority to "bar or suspend for a period not exceeding twelve months any person from being associated with any broker or dealer. . ." Respondent has been barred for life from being associated with any broker-dealer under this section. In his petition for writ of certiorari to review the decision of the court of appeals affirming that his petition for writ of certiorari to review the decision of the court of appeals affirming that bar, Respondent contended that the S.E.C. had exceeded its statutory mandate (Pet. No. 76-1547, p. 33). In response, the S.E.C. stated (Brief in opposition, p. 7): "Under petitioner's interpretation the word 'suspend' would be surplusage." However, under the S.E.C.'s interpretation, the words "for a period not exceeding twelve months" are surplusage. For example, in its proceedings against the former S.E.C. Chief Investigative Attorney who initially instigated the numerous proceedings against Canadian Javelin Ltd., the S.E.C. invoked a "bar" for a period of two years. *In the matter of Edward C. Jaegerman*, Securities Exchange Act Release No. 12905, 10 SEC Docket 726 (October 19, 1976). In the case of §15(b)(7), in 1975 Congress renumbered the statute as §15(b)(6) and amended it in such as a way as to codify the S.E.C.'s interpretation of what the statute said, or more accurately, what the S.E.C. believed the statute should say. With respect to the statute involved in the instant case, however, Congress has failed to amend the statute in such a way as to codify the authority which the S.E.C. claims it has.

The S.E.C. does not cite the decisions of this Court which are contrary to its position, of which there are many. Indeed, this Court seems to have said on a number of occasions that in particular the views of the S.E.C., as opposed to the views of other more reputable government agencies, are disentitled to judicial deference. See e.g. *Piper v. Chris Craft Industries, Inc.*, 430 U.S. 1, 41 n. 27 (1977); *Ernst & Ernst v. Hochfelder*, 425 U.S. 185, 199 (1976); *Foremost-McKesson v. Provident Securities*, 423 U.S. 232, 259-260 (1976). This is not a surprising result, because the S.E.C. can be seen invariably to adopt the view which gives the broadest possible scope to the federal securities laws and to the power and authority of the S.E.C. It is not surprising that sometimes the expansive views of the S.E.C. are not in accord with the intent of Congress as determined by the courts. In the case presented here no judicial deference whatever should be accorded to the views of the S.E.C. The judicial deference rule is applicable only in cases where "an agency has rendered binding, consistent, official interpretations of its statutes over a long period of time." *Piper v. Chris-Craft Industries, Inc., supra*, 430 U.S. at 41, n. 27. In the instant case, the S.E.C. has failed to cite any "binding, consistent, official interpretations, of the statute" whatever. All it says is that the S.E.C., for a long period of time, had followed the practice of issuing successive trading suspension orders and therefore it must be concluded that the S.E.C. thought about the matter and decided to interpret the applicable provisions of the Securities Exchange Act in such a way as to give the S.E.C. this authority. However, the fact is that the S.E.C. has never issued an official interpretation of the statute with respect to §12(k) of the Securities Exchange Act or its predecessor provisions. There are statements, such as the statement by the then Chairman of the S.E.C., Edward N. Gadsby, quoted

supra, which indicate that there has been an official interpretation of the statute, but statements, speeches, and the like by individual commissioners of the S.E.C. are invariably prefaced with the words "the Securities and Exchange Commission, as a matter of policy, disclaims responsibility for any private publication or speech by any of its members or employees." In addition, it should be remembered that in his speech, Commissioner Gadsby stated, "[I]t has been found necessary to renew the suspension[s] for successive ten-day periods. No express authority for such action is contained in §19(a)(4). . . ." Clearly, no judicial deference should be accorded to the view now expressed by the attorneys from the Office of General Counsel of the S.E.C. appearing in this Court and who appeared in the court of appeals, when those views are not supported by any authoritative opinions of the S.E.C. itself. Indeed, one of the cases cited by the S.E.C. dealt with precisely this point. In *Investment Co. Institute v. Camp*, 401 U.S. 617, 628 (1971) this Court stated:

> "In *Burlington Truck Lines v. U.S.*, 371 U.S. 156, we said, 'The courts may not accept appellate counsel's *post hoc* rationalizations for agency action. . . . For the courts to substitute their or counsel's discretion for that of the agency is incompatible with the orderly functioning of the process of judicial review.' *Id.*, at 168-169. Congress has delegated to the administrative official and not appellate counsel the responsibility for elaborating and enforcing statutory commands. It is the administrative official and not appellate counsel who possesses the expertise that can enlighten and rationalize the search for the meaning and intent of Congress."

This citation alone would seem fatal to the S.E.C.'s entire presentation. The S.E.C. itself has never issued an authoritative opinion which purports to "enlighten and rationalize the search for the meaning and intent of Congress." In fact, the S.E.C. has been totally silent with

regard to the qustion of the successive trading suspension orders. The "press release," as Securities Exchange Act releases were called in those days, cited in the S.E.C.'s brief, *In the Matter of Elastic Stop Nut Corp. of America*, Securities Exchange Act Release No. 3626 (November 29, 1944), merely announced a suspension of trading in that security for ten days. When that ten-day period expired, the S.E.C. did not issue an authoritative opinion stating that it interpreted §19(a)(4) of the Securities Exchange Act as giving it the authority to suspend trading for a further ten-day period. To the contrary, the S.E.C. was totally silent and did not even issue a release announce the continuation of the trading suspension. The procedure adopted by the S.E.C. at the time, which it also followed during the years prior to the November 18, 1976 decision of the court of appeals, was that a release was issued at the time of the initial trading suspension and generally no further releases were issued until the S.E.C. announced that trading would be allowed to resume.

One might wonder why the S.E.C. never had occasion to issue a statement as to the legal basis for issuing successive ten-day trading suspension orders. The answer is obvious. As the statement by S.E.C. Chairman Gadsby shows, the S.E.C. knew that it was on shaky legal ground when it issued successive trading suspension orders. It also knew that most people would assume that a government agency such as the S.E.C. was acting legally. Therefore, it simply avoided the issue and the public outcry which might have resulted from a formal statement that it believed it had the power under §19(a)(4) to suspend trading for as long a period of time as it deemed necessary and in most cases adopted the pragmatic procedure of not even issuing a Securities Exchange Act release when it continued a trading suspension. In this way, only the persons directly affected by a successive trading suspension order would have occasion even to become aware of the fact that

the S.E.C. had exercised the power to suspend trading in a stock for a lengthy time period.

In 1956 the publication of the *SEC News Digest* commenced. In this publication, summary orders continuing a trading suspension were announced officially. *The Wall Street Journal* has also published brief announcements of the continuation of trading suspensions, but on a sporadic basis. However, the S.E.C. has never issued anything resembling a "binding, consistent, official interpretation of the statute" and rarely even a reason for continuing a trading suspension. This practice was criticized in the article by Goldman and Magrino as follows (Goldman and Magrino, *supra,* 15 N.Y.L. Forum at 656):

> "It is most strongly urged upon the Commission that the periodic extensions which are presently reflected only in the SEC News Digest, be made the subject of specific releases under the Exchange Act. These releases should, in themselves, report progress, if any, as to the then present status of the Commission's investigation and the facts thus far uncovered, thereby serving to provide the investment community with some basis for valuation and predictability."

F

The S.E.C. also argues (Brief p. 26) that "[w]here Congress has re-enacted or significantly amended a statute disapproving the agency's construction, Congress may appropriately be considered to have approved that construction as correct." However, the cases cited by the S.E.C. are all distinguishable from the instant case. For example, in *United States v. Correll,* 389 U.S. 299, 305-306 (1967) the Court noted that, "More than a dictionary definition is thus required to understand the provisions herein involved, and no appeal to the 'plain language' of the statute can obviate the need for further statutory construction."

Id. at 16. It then noted that "Congress heard a taxpayer plea for a change in the rule" and "[n]o such change resulted." *Id.* at n. 20. The matter was actively discussed by members of both houses of Congress. In the instant case, it is true that a written statement by the S.E.C. to the appropriate House committee did advise that on occasion the S.E.C. had found it necessary to suspend trading for more than one ten-day period. However, this statement was included in the small print of the hearings before a House and Senate subcommittee, noone contested the matter, it was never debated, and contrary to the representations in the S.E.C.'s brief (Brief, p. 29), the House Committee which "favorably reported on the amendment" said nothing about the possibility that the S.E.C. might suspend trading for more than one ten-day period. See House Report No. 1418, 88th Cong., 2d Sess. 24 (1964). The Senate Report, although more helpful to the S.E.C.'s position here, merely parroted what the S.E.C. had said in its formal statement proposing amendments to the legislation and again the matter was not contested or debated. See Senate Report No. 379, 88th Cong., 1st Sess. 66-67 (1963). As noted previously, the words of the proposed statute were plain and unambiguous and in contrast the words of the S.E.C. suggesting that there might be more than one trading suspension were unclear. It cannot be assumed that any member of the House or the Senate, much less a majority of both bodies, read the report and realized that this might mean that the S.E.C. might suspend trading in a security for a year or more or even for as long as thirteen years, all without notice or the opportunity for a hearing.

Moreover, even assuming that Congress was aware of the practices of the S.E.C., that would not help the position of the S.E.C. here because the practices of the S.E.C. were considerably different at that time. On this point, the brief for the S.E.C. misrepresents the facts. It states that

after 1944 the S.E.C. rarely instituted proceedings under §19(a)(2). (Brief p. 33, n. 14). However, the fact is that from 1944 until 1964 the S.E.C. customarily instituted proceedings under §19(a)(2) of the Securities Exchange Act or under §8(d) of the Securities Act of 1933 ("Securities Act") simultaneously with a trading suspension under §19(a)(4), as the statement by S.E.C. Chairman Gadsby indicates, and subsequently published formal findings. For example, the S.E.C.'s first exercise of the trading suspension power resulted in the publication of twelve pages of formal findings reported as *In the Matter of Elastic Stop Nut Corporation of America*, 19 S.E.C. 412 (1945). Similarly, after the S.E.C.'s second exercise of the trading suspension power, *In the Matter of Red Bank Oil Co.*, Securities Exchange Act Release No. 3744 (October 16, 1945), the S.E.C. conducted hearings which resulted in an 18-page decision reported as *In the Matter of Red Bank Oil Co.*, 21 S.E.C. 695 (January 4, 1946) which ordered that the registration of Red Bank Oil Co. be suspended for twelve months pursuant to §19(a)(2). It is noteworthy that the S.E.C. invoked a §19(a)(4) suspension from October 16, 1945 until January 6, 1946, *Id.*, 21 S.E.C. at 697, and then invoked a §19(a)(2) suspension from then until January 3, 1947.

This pattern continued until the 1964 Amendments to the Securities Exchange Act. It is true that this procedure violated the express language of §19(a)(4) of the Securities Exchange Act, but there were substantial safeguards. Any time a trading suspension extended for more than ten days there was, in fact, the opportunity for a hearing. In the course of this hearing the corporation could be vindicated, if the trading suspension was unjustified. Due to the fact that the S.E.C. staff knew that it might be required to demonstrate that the trading suspension was justified in an adversary proceeding, it was more likely to exercise appropriate restraint and not to request a trading suspension

without valid reason. The following are a few examples of how the S.E.C. proceeded in practice prior to the 1964 amendments.

Trading was suspended in Adolf Gobel, Inc. from March 3, 1953 until February 19, 1954 during which lengthy hearings were conducted which resulted in findings and opinion of the S.E.C. reported as *In the Matter of Adolf Gobel, Inc.*, 35 S.E.C. 535 (February 18, 1954) which ordered that trading would be allowed to resume. Trading was suspended in Bellanca Corporation (formerly Bellanca Aircraft Corporation) from April 24, 1957 until June 8, 1958 which resulted in findings and opinion of the S.E.C. reported as *In the Matter of Bellanca Corporation*, 38 S.E.C. 405 (June 2, 1958) which ordered the withdrawal of exchange registration in the corporation's stock. Trading was suspended in Cornucopia Gold Mines from July 28, 1958 until November 11, 1958. After the suspension was lifted and hearings pursuant to §19(a)(2) were completed, the S.E.C. issued findings and opinion which ordered the withdrawal of exchange registration of the corporation's stock. See *In the Matter of Cornucopia Gold Mines*, 40 S.E.C. 177 (August 11, 1960). Trading was suspended in The Bon Ami Company from February 11, 1959 until March 12, 1959 and subsequently the New York Stock Exchange removed the securities from listing and registration. In spite of the fact that this development left nothing before the S.E.C., it issued findings reported as *In the Matter of The Bon Ami Corporation*, 40 S.E.C. 933 (November 29, 1961) which set forth the factual basis for the proceedings against the corporation. Trading was suspended in Skiatron Electronics and Television Corporation on December 18, 1959 simultaneously with the commencement of stop order proceedings under §8(d) of the Securities Act. This trading suspension continued until October 12, 1960 and terminated following a decision of the S.E.C. to issue a stop order. See *In the Matter of*

Skiatron Electronics and Television Corporation, 40 S.E.C. 236 (October 3, 1960). Trading was suspended in Consolidated Development Corporation on February 12, 1960 in connection with a stop order proceeding under §8(d) of the Securities Act and this suspension continued until November 8, 1960 and terminated following a decision of the S.E.C. to issue a stop order suspending the effectiveness of the corporation's registration. See *In the Matter of Consolidated Development Corporation,* 40 S.E.C. 294 (October 27, 1960). Trading was suspended in Precision Microwave Corporation from April 4, 1962 until December 19, 1962 and in August, 1962 the S.E.C. instituted stop order proceedings pursuant to §8(d) of the Securities Act as well as deregistration proceedings pursuant to §19(a)(2) of the Securities Exchange Act. On May 22, 1964, the S.E.C. concluded these proceedings by ordering the suspension of the corporation's stock on the Midwest Stock Exchange for 30 days. See *In the Matter of Precision Microwave Corporation,* 40 S.E.C. 971 (1964). Trading was suspended in Atlantic Research Corporation from October 10, 1962 until November 16, 1962 at which time the corporation transmitted a report to its stockholders which was a factor leading to a decision of the S.E.C. to lift its "order temporarily suspending trading in the registrant's stock." However, the decision of the S.E.C. subsequently found that even this report failed to contain "an adequate, fair and candid statement of the facts . . . " and accordingly the S.E.C. issued a stop order. See *In the Matter of Atlantic Research Corporation,* 41 S.E.C. 733, 764 (December 6, 1963).

Atlantic Research Corporation was the last corporation which had its securities suspended from trading where the trading suspension terminated prior to the passage of the 1964 amendments to the Securities Exchange Act. The next security to be suspended from trading was that of Continental Vending Machine Corporation. That suspension commenced on May 8, 1963 and continued until June 2, 1976, a duration of more than thirteen years. The S.E.C.'s conduct in this proceeding stands in marked contrast to the actions of the S.E.C. prior to the 1964 amendments. At the termination of that trading suspension, the S.E.C. issued Securities Exchange Act Release No. 12505, 9 SEC Docket 787 (June 2, 1976) which stated that the reason for this prolonged trading suspension was that the corporation had been undergoing proceedings in bankruptcy and further stated that the suspension was being terminated because a court had determined that the common stock was worthless and would be cancelled. The release issued by the S.E.C. set forth no findings and opinion and made no statement that either the corporation or anyone else had committed any misconduct. The release failed to explain why the S.E.C. had found it necessary to suspend trading in this particular security for the extraordinary period of more than thirteen years but had not suspended trading for even a ten-day period in innumerable other securities of corporations which had undergone proceedings in bankruptcy. For many years there has been a rumor in Wall Street that the reason for the trading suspension in Continental Vending Machine Corporation was that this corporation, along with many other companies in the vending machine business, was Mafia controlled. However, the release issued by the S.E.C. failed to answer the question of the real reason for the S.E.C.'s prolonged trading suspension and it is apparent that the S.E.C. intends never to answer this question.

Clearly, Congress could not have anticipated this result when it enacted the 1964 amendments to the Securities Exchange Act. Even assuming *arguendo* that Congress was fully informed of the practices of the S.E.C. and acquiesced to its usurpation of power when it passed the 1964 amendments, all it did was agree that the S.E.C.

could continue its practice of continuing a trading suspension in connection with proceedings and hearings pursuant to either §19(a)(2) of the Securities Exchange Act or §8(d) of the Securities Act, that being the policy of the S.E.C. prior to the 1964 amendments, a policy abandoned shortly after these amendments were enacted. Incidentally, it should be noted that the termination of the suspension of trading of securities of Continental Vending Machine Corporation apparently came as a direct result of pressure brought to bear as a result of the proceedings instituted by Respondent challenging the suspension of trading in Canadian Javelin Ltd. Less than ten days after the June 2, 1976 release announcing the decision to terminate the trading suspension in Continental Vending Machine Corporation, the S.E.C. filed in this Court a brief in opposition to a petition for a writ of certiorari filed by Respondent which argued that the case was moot because "no order summarily suspending trading is any longer in effect." (Brief for S.E.C. In No. 75-1507, p. 2).

G

Another weakness in the S.E.C.'s presentation concerns the emphasis which the S.E.C. finds it necessary to place on the 1964 amendments to the Securities Exchange Act, as opposed to the 1934 enactment of the statute and the more recent 1975 amendments. As noted previously, the S.E.C. never says, and cannot say, that in passing the original version of the Securities Exchange Act in 1934, Congress intended to authorize the S.E.C. to suspend trading in a security for a time period exceeding ten days. Rather, the S.E.C. claims that when Congress extended the trading suspension power to over-the-counter securities in 1964, it acquiesced to the assumption by the S.E.C. of the power to suspend trading in a security for more than a period of ten days even though it used virtual-

ly the same language in the 1964 amendment, namely §15(c)(5) of the Securities Exchange Act, which had been used in 19(a)(4) of the original statute. However, the S.E.C. fails to explain how the enactment of §15(c)(5) in any way altered the meaning of §19(a)(4), which was not amended at that time. It has already been demonstrated *supra* that §19(a)(4) was intended as an emergency power and the strict ten-day limitation on its exercise was included for that reason.

One problem with the arguments of the S.E.C., in addition to the problems already pointed out, is that in 1975 both §15(c)(5) and §19(a)(4) were repealed and the new §12(k) was enacted. Recognizing the problem created by this development, the S.E.C. asserts that with respect to the 1975 amendments (Brief p. 34), "There is no indication that any substantive change was intended." This statement is rather curious considering the fact that on the next page of its brief the S.E.C. quotes from the report of the appropriate Senate Committee which states, *"With this change,* the Commission is expected to use this section rather than its 10-day suspension power in cases of extended duration" (emphasis added).

The contention of the S.E.C. is that the 1964 amendments to the Securities Exchange Act changed the meaning of the statute, although neither the House nor the Senate Report stated that a change was occurring beyond extending the S.E.C.'s trading suspension power to over-the-counter securities, and that the 1975 amendments to the Securities Exchange Act did not change the statute, although the Senate Report expressly states that the statute was being changed. The S.E.C. further contends that the words in the Senate Report, particularly the statement which said, "The Commission is expected to use this section rather than its ten-day suspension power in cases of extended duration," means something quite different from what the court of appeals found that it meant. The

S.E.C. contends (Brief p. 36) that this statement demonstrates that "the Committee knew that the Commission continued to possess the authority, which the Committee had approved in 1964 . . . , to issue successive trading suspension orders 'in cases of extended duration'." In other words, the S.E.C. contends that when the Senate report stated that, "The Commission is expected to use" §12(j) rather than §12(k) to suspend trading in a security for a period of extended duration, it nevertheless left open to the S.E.C. the alternative of using §12(k) in appropriate cases. Therefore, concludes the S.E.C., the suspension of trading of Canadian Javelin Ltd. under §12(k) for a period of more than one year was a valid exercise of the S.E.C.'s discretionary authority. In expressing this view, the S.E.C.'s brief states (Brief p. 36), "In other words, the Committee expressed a preference as to how the Commission should proceed, but it left the final decision as to the appropriate mode of enforcement in particular cases to the Commission's discretion."

In the next sentence of its brief, the S.E.C. stoops to total dishonesty. It states:

> "If the Committee had intended to terminate or circumscribe the authority it had earlier acknowledged to exist under predecessors of Section 12(k), it would have done so in the text of Section 12(k) itself; it cannot be presumed to have done so merely by including precatory language in a section of its report that discusses a different provision of the Act."

It has already been pointed out that the report issued by the Senate Committee concerning the 1964 amendment to the Securities Exchange Act can hardly be said to have acknowledged that the S.E.C. had the authority to suspend trading in a security for a lengthy time period. Thus, the first part of the above quoted sentence is misleading. The second part of the sentence, where the S.E.C. states

that the decision of the court of appeals quoted from "precatory language in a section of its report that discusses a different provision of the Act," is an outright falsehood. The full pertinent text of the Senate report in question, which was quoted in the decision of the court of appeals, states (Senate Rep. No. 94—75, 94th Cong., 1st Sess. 106 (1975):

> "Section 8 of the bill would amend Section 12 of the Exchange Act by adding new subsections (j), (k), (l) and (m).
>
> Subsection (j) would provide a more logical placement of the authority the S.E.C. already has under present section 19(a)(2) to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to withdraw the registration of any security if it finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of the Exchange Act or the rules and regulations thereunder. It would also make unlawful any trading in any such security by any broker or dealer. With this change, the Commission is expected to use this section rather than its ten-day suspension power in cases of extended duration.
>
> Subsection (k) would consolidate in one place the power the S.E.C. presently has under sections 15(c)(5) and 19(a)(4) of the Exchange Act to suspend summarily trading in any security (other than an exempted security) for a period not exceeding ten days. The S.E.C.'s power, with the approval of the President, to suspend summarily all trading on a national securities exchange would be continued and extended to include the power to prohibit trading in all securities, other than exempted securities, otherwise than on an exchange."

Thus it can be seen that, contrary to the representations of the S.E.C., the decision of the court of appeals quoted from a section of Senate Report No. 94-75 which discussed §12(k) of the Securities Exchange Act, not, as the S.E.C. claims, from "a section . . . that discusses a

different provision of the Act." At this point it becomes apparent that the S.E.C. is engaging in a deliberate effort to confuse the Court by raising fictitious issues. This trend is also apparent on pages 32-33 of its brief, where the S.E.C. compares and contrasts trading suspensions under §12(k) of the Securities Exchange Act with deregistration proceedings under §12(j) of the Securities Exchange Act. It claims, for example, that "important protections are lost when the registration of a security is revoked pursuant to Section 12(j)." All this is very interesting, but it has no relevance to this case. Section 12(j) authorizes the S.E.C., *inter alia,* "to suspend for a period not exceeding twelve months, or to revoke the registration of a security . . . " It may be as the S.E.C. claims that the remedy of deregistration is too Draconian, but if that is the case, why cannot the S.E.C. simply suspend the registration of the offending security "for a period not exceeding twelve months." If the registration of a security is suspended, the corporation is still required to file 10-K and the other required reports and because of the last sentence of §12(j), a suspension of registration has precisely the same effect as a suspension of trading, as the S.E.C. itself admits (Brief p. 29). In practice, the only difference between suspension proceedings under §12(j) and §12(k) is that under §12(j) the S.E.C. is required to give "notice and opportunity for hearing" and to make findings "on the record" whereas under §12(k) it need not do so. It is apparent that the S.E.C. prefers to invoke §12(k) simply because it does not wish to go to the trouble of providing notice, giving potentially aggrieved parties the opportunity to be heard and making formal findings of fact, not to mention the embarrassment the S.E.C. would suffer if it were to turn out that the charges made in proceedings instituted under §12(j) were false.

In rationalizing this unwillingness to give aggrieved parties the opportunity to be heard, the S.E.C. asserts

that, "It is impossible within a ten-day period, for the Commission" to complete an administrative proceeding. To be sure, if the S.E.C. adopts deliberate delaying tactics as it did in the administrative proceedings against Respondent, which lasted three years and three days, and as it has done in many other cases, see e.g. *Koss v S.E.C.,* 364 F. Supp. 1321, 1322-1323 (S.D.N.Y. 1973); *Arthur Lipper Corp. v. S.E.C.,* 547 F. 2d 171, 176, 184 (2d Cir. 1976), *rehearing denied* 551 F. 2d 915 (1977), *cert. denied,* __U.S.__ (1978), it will, in fact, find it impossible to complete proceedings within ten days. However, if it proceeds expeditiously, something which the S.E.C. has not recently been known to do but which nevertheless is not impossible, proceedings could be completed in ten days. On an every day basis, the S.E.C. asks federal district judges to proceed more expeditiously than the S.E.C. now claims it is possible for the S.E.C. itself to proceed. For example, in one of the cases involving Respondent, the S.E.C. staff requested permission to institute suit on December 27, 1974, obtained this permission on December 30, 1974, filed suit the same day, and requested and obtained from Judge Ward a temporary restraining order within a few hours after the suit was filed. No explanation is given for the fact that the S.E.C. claims it is "impossible" to do in ten days what the S.E.C. regularly asks judges to do in a few hours. The S.E.C. claims, for example, that it is impossible, within a ten-day period, for the Commission to "(a) conduct an investigation sufficient to determine whether an administrative proceeding pursuant to §12(j) ought to be instituted." One would have thought that when the S.E.C. resorts to the remedy of suspending trading in a security, it has sufficient command of the facts to know whether an administrative proceeding ought to be instituted. Similarly, the S.E.C. states that ten days is insufficient to "(b) provide the issuer with adequate notice of the alleged violations." Again, assuming the S.E.C. knows the facts,

it is difficult to perceive a reason for the S.E.C.'s inability to notify the issuer of these facts. As for the claim that it is impossible for the S.E.C. to "(c) hold a hearing on the record before an administrative law judge," it would seem that the appropriate remedy would be for the S.E.C. to hire more administrative law judges or else judges of a better quality than it now employs. As to the claim that the time is insufficiently long to "(d) permit the administrative law judge to consider the matter prior to rendering an initial decision; and (e) review the initial decision rendered by the administrative alw judge," it should be pointed out that if the record is unclear and there is a substantial basis for believing that trading ought not to be suspended, a circumstance which would provide the most likely explanation for the inability of an administrative law judge and the S.E.C. itself to make findings of fact expeditiously, it would seem appropriate not to suspend the registration of a security until the full facts can be determined and to permit open market trading to continue. Admittedly, the S.E.C. will find it inconvenient if it is forced to do something in ten days which it is accustomed to doing in three years or more, but it must be remembered that stockholders have rights too and if the S.E.C. is unwilling to conduct hearings and make findings of fact as to the reasons for a suspension, individual investors should not be forced to suffer.

If the S.E.C. finds that ten days is too short a period of time to complete administrative proceedings under §12(j) of the Securities Exchange Act, its remedy is to apply to Congress for an amendment to the statute. Perhaps Congress would be willing to amend the statute so as to give the S.E.C. the right to temporarily suspend the registration of a security during the pendency of proceedings under §12(j). An analogous provision exists in §15(b)(5)(B) of the Securities Exchange Act, 15 U.S.C. §78*o*(b)(5)(B). In any event, none of this applies to the instant case, because the S.E.C. did not institute proceedings under §12(j) with respect to the securities of Canadian Javelin Ltd. In fact, as far as Respondent has been able to determine, the S.E.C. has never instituted proceedings of any kind under §12(j). What has obviously happened is that the S.E.C. has found §12(j) to be unsatisfactory, but rather than ask Congress for an amendment to the statute, it has undermined the purpose of the statute by utilizing §12(k) in a manner contrary to the expressed intent of Congress.

H

The S.E.C. argues that the court of appeals "did not grasp the significant differences between" §12(j) and §12(k) of the Securities Exchange Act (Brief p. 29). The S.E.C.'s principal argument on this point is that only securities registered with the S.E.C. may become the subject of deregistration proceedings. This argument, of course, does not apply to the facts of the instant case because Canadian Javelin Ltd. is, in fact, registered with the S.E.C.[46] What the S.E.C. is really saying is that in spite of the arsenal of weapons given to the S.E.C. by

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46. The registration of Canadian Javelin Ltd. is purely voluntary, since it is a foreign issuer and therefore is exempt from the registration requirements. Canadian Javelin Ltd. is one of very few foreign issuers which file reports on Form 10-K. Normally, foreign issuers of securities who seek to have their securities listed on a stock exchange in the United States must agree to file financial information with the S.E.C. on Form 20-K. See CCH Fed. Sec. Law Rep. ¶32,221 [Exchange Act Binder]. Foreign issuers of securities not listed on a stock exchange may be required to file reports under S.E.C. Rule 12g3-2(b), 17 C.F.R. §240. 12g3-2(b). Canadian Javelin Ltd. came to file 10-K reports with the S.E.C. as a result of the injunctive action instituted by the S.E.C. on September 25, 1958. That action was concluded the same day with the consent by Canadian Javelin Ltd. that it would list its shares on the American Stock Exchange and would thereafter file financial reports required of United States issuers of securities. See transcript of hearing in *S.E.C. v. Canadian Javelin Ltd.*, 1958 Civil Action File No. 138-85 (S.D.N.Y.).

Congress, including the power to institute injunctive actions, administrative proceedings of various types and proceedings under §32(a) and §32(b) of the Securities Exchange Act, not to mention the power to transmit to the Attorney General a criminal reference, Congress has created a loophole by not giving power to the S.E.C. which is sufficiently broad. Indeed, when the first case was argued before the court of appeals on September 26, 1975, the attorney arguing orally for the S.E.C. used the term "loophole" to describe the statutory problem now discussed in the S.E.C.'s brief. The short answer to this is that if there is indeed a "loophole", the remedy is for the S.E.C. to ask Congress to fill it.

Contrary to the arguments of the S.E.C. (Brief p. 30-31), there is a rational basis for the decision of Congress not to authorize the S.E.C. to issue orders pursuant to §12(j) "in cases involving manipulation or fraud by third parties, in corporate crises, in situations where adequate financial information is unavailable and where markets have been disrupted by speculation based on rumors of doubtful accuracy." In a situation involving manipulation or fraud by third parties, the remedy of the S.E.C. is to go after those third parties by injunctive proceedings or, where those third parties are broker-dealers, by administrative proceedings pursuant to §15(b)(4) and §15(b)(6) of the Securities Exchange Act, rather than punish the innocent corporation, its officers and its stockholders by a prolonged trading suspension. Similarly, in cases of corporate crisis or where adequate financial information is unavailable, the remedy is for the corporation to notify the public of the situation or, failing that, the issuance of a Securities Exchange Act Release by the S.E.C. Congress has frequently made it clear that the philosophy of the Securities Exchange Act is one of full disclosure. If the full facts are unavailable and unknowable due to the fault of noone, a situation which

might conceivably arise in a case of "corporate crisis," the Securities Exchange Act clearly does not authorize the S.E.C. to invoke the Draconian remedy of a prolonged suspension and/or deregistration, and for good reason. As far as "speculation based upon rumors of doubtful accuracy" is concerned, it is a fact of life that the securities markets are constantly influenced by rumors, some true and some untrue, and Congress was undoubtedly aware of this. Contrary to the representations of the S.E.C., the existence of rumors often has a beneficial effect on securities markets, as can be seen by the number of instances in which corporate officers have issued statements denying the truth of rumors, only to have these rumors proven true a few days later. Clearly, Congress had a sound rational basis for its decision to deny the S.E.C. the authority to suspend or revoke the registration of a security based on the S.E.C.'s determination that the market is influenced by "rumors of doubtful accuracy."

A reading of the full text of Senate Report No. 94-75, which expresses Congressional dissatisfaction with many aspects of the S.E.C.'s performance of its statutory duties, makes it abundantly clear that the decision of the court of appeals concerning legislative intent is correct. For example, in its discussion of Rule 15c2-11, Senate Report No. 94-75 at p. 48 stated, "The Committee expects, therefore, that, immediately upon enactment of S. 249, the Commission will exempt municipal securities from Rule 15c2-11." It is noteworthy that the Senate Report used the words "expects" in this sentence just as it used the words "expected" when it said, "The Commission is expected to use this section rather than its 10-day suspension power in cases of extended duration." It is obvious from the context that the S.E.C. could not contend that when Senate Report No. 94-75 states that, "The Committee expects . . . the Commission will exempt municipal securities from Rule 15c2-11," it did not, as the S.E.C.'s

brief now claims with regard to analogous language (Brief p. 36), express "a preference as to how the Commission should proceed, but it left the final decision as to the appropriate mode . . . to the Commission's discretion."

I

Incidentally, the S.E.C. did not amend Rule 15c2-11, in spite of the express directive from Congress that it do so. This illustrates one final point. Congress has delegated to the S.E.C., an independent administrative agency, the authority to take certain action. If the S.E.C. exceeds that authority, Congress has no actual power to do anything about it. Regardless of what words Congress uses in its Senate and House Committee Reports, and regardless of how express its directives might be, as a practical matter the unbridled zeal of an administrative agency may only be tempered by judicial action such as the action the court of appeals took in the instant case.

This court has held that "an agency may not bootstrap itself into an area in which it has no jurisdiction by repeatedly violating its statutory mandate." *Federal Maritime Commission v. Seatrain Lines, Inc.*, 411 U.S. 726, 745 (1973). "[A]dministrative practice does not avail to overcome a statute so plain in its commands as to leave nothing for construction." *Norwegian Nitrogen Products Company v. United States*, 288 U.S. 294, 315 (1933). "Administrative construction over a long period of time is an available tool for judicial interpretation only when the statutory terms are doubtful or ambiguous." *United States v. Southern Ute Indians*, 402 U.S. 159, 173 n. 8 (1971); *Estate of Stanford v. Commissioner*, 308 U.S. 39, 42 (1939); *Norwegian Nitrogen Products v. United States, supra*. The S.E.C. argues in its brief that if Congress intended to limit the S.E.C.'s authority under §12(k) it should have done so "in the text of Section 12(k) itself;"

rather than through "precatory language in a section of" a Senate Committee Report. However, the S.E.C. fails to suggest any alternative statutory language which could more expressly limit the authority of the S.E.C. to suspend trading in a security for a period not exceeding ten days without creating a host of problems such as effectively immunizing a security from ever again being suspended from trading once a ten-day trading suspension order has been issued. The S.E.C.'s argument also ignores the fact that the present §12(k) adopts language which is identical in all pertinent respects to the original §19(a)(4) and both the House and the Senate Committee Reports stated in 1934 when that section was enacted that §19(a)(4) was intended to authorize the exercise of an emergency power with a duration strictly limited to ten days. There was no reason for Congress to feel the need to adopt even more express language than that found in §19(a)(4) when it enacted §12(k), if any is possible. Moreover, "Congressional inaction frequent betokens unawareness, preoccupation, or paralysis," *Zuber v. Allen*, 396 U.S. 168, 185-186 n. 21, 24 (1969).

The case presented here is clearly one where Congress has limited the authority of an agency to act, and in express terms. If the S.E.C. is allowed to prevail, it will mean that the S.E.C. and other government agencies will have broad latitude to interpret statutes as they see fit and there will be almost no limit to the extent to which an agency such as the S.E.C. could expand its own jurisdiction. Indeed, a number of members of the S.E.C. staff, including its publicity-hungry enforcement chief, Stanley Sporkin, have gone on record as stating that there is a deliberate policy of the S.E.C. to be continuously expanding its jurisdiction into new areas. Most of the recent judicial setbacks the S.E.C. has suffered have stemmed, not from an unduly restrictive attitude on the part of judges, as the S.E.C. commissioners and staff have often

claimed, but because of the S.E.C.'s efforts to expand its jurisdiction so as for example, to enjoin activities heretofore never thought to have been prohibited by the Securities Exchange Act. If this Court allows the S.E.C. to prevail in the instant case, it will set a dangerous precedent and there will be virtually no limit to the raw power of the S.E.C. to take oppressive action.

IV

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT ANY OF THE TEN-DAY TRADING SUSPENSION ORDERS AND HENCE ALL OF THE ORDERS MUST BE VACATED

The petition for a writ of certiorari filed by the S.E.C. set forth two questions as being presented by this case. This Court granted the S.E.C.'s petition and denied Respondent's petition and, hence, the S.E.C. contends that the only questions involved in this case are the two questions presented by the S.E.C. and these questions are purely statutory in character, as a result of which the judges of this Court should not read the record and should not become familiar with the facts of this case, but rather should decide the abstract question of whether there might exist circumstances under which the S.E.C. could legally suspend trading in a security for successive ten-day periods. It is submitted, however, that this argument should be rejected. The case before this Court involves thirty-seven trading suspension orders of securities of Canadian Javelin Ltd. and related proceedings. The principal question before this Court is whether the S.E.C. acted illegally in issuing these thirty-seven trading suspension orders. It follows necessarily that the judges of this Court must read the record and must familiarize themselves with the facts and circumstances of these particular trading suspension orders in order even to reach the statutory questions which the S.E.C. has raised. The court of appeals has expressed agreement with this view. In the first decision involving trading suspension orders, *Sloan v. S.E.C.*, 527 F. 2d 11, 12 (2d Cir. 1975), the court of appeals stated:

> "We consider his blunderbuss attack frivolous except for its allegation that the 'tacking' of ten-day summary suspension orders by the S.E.C. for an indefinite period constitutes an abuse of that agency's authority and a deprivation of due process. Apparently this question has never been judicially considered and would seem not to be frivolous; see 2 L. Loss, Securities Regulation 854-55 (2d ed. 1961). We cannot decide it on the record before us. The record is entirely silent as to the reasons for the second series of suspensions, commencing in April of this year; we cannot tell whether they are based on substantial evidence, and hence cannot decide if they amount to an abuse of discretion by the S.E.C."

Following this, the court of appeals stated that it was dismissing Respondents' petition "without prejudice to this repleading after an administrative hearing before the S.E.C., from which judicial review might be sought" which would serve the purpose of "contributing to the record we now find insurmountably sparse." Thus, the court of appeals expressly stated that it needed to review a record which was not "insurmountably sparse" in order to determine the statutory question which the court of appeals eventually resolved in the second decision, *Sloan v. S.E.C.*, 547 F. 2d 152 (2d Cir. 1976). The S.E.C. did not seek review of the first decision of the court of appeals; it made no objection to the decision of that court at that time.

Subsequently, Respondent petitioned the S.E.C. for an administrative hearing. In spite of the representations made to the court of appeals that it was prepared to grant

"some sort of administrative hearing," the S.E.C. denied this petition and consequently no administrative hearing was held. When Respondent then filed the second petition for review challenging the then current series of trading suspension orders, the S.E.C. did not file the record but rather filed a "certified list of items comprising the record." The S.E.C. did, however, provide Respondent with a copy of the record and Respondent included most of this record in his appendix to the appeal. Only in the manner did the court of appeals have the opportunity to read the record. In its decision of the second case, the court of appeals stated (Pet. App. B, p. 11a):

> "With respect to the first of these claims, an examination of the record discloses there was sufficient evidence of probable manipulation of CJL's common stock and of the false and fraudulent representations as to its soundness and value to justify the Commission's conclusion that the public interest and the protection of investors required summarily to suspend trading 'for a period not exceeding ten days' . . . "

Thus, the court of appeals did purport to review the record and determine that the first trading suspension order was valid. However, an examination of the record of the first trading suspension order (App. 11-12), makes it apparent that this determination by the court of appeals was clearly erroneous. The "informational memorandum" which provides the reasons given by the S.E.C. for the first trading suspension states (App. 12):

> "The trading suspension was prompted by the Royal Canadian Mounted Police having informed us that they were in the process of executing more than 40 search warrants in connection with their investigation of this matter."

Thus, the decision of the court of appeals was wrong because the S.E.C. never stated that it was suspending

trading in Canadian Javelin Ltd. stock because "there was sufficient evidence ofprobable manipulation of Canadian Javelin Ltd.'s common stock and of the false and fraudulent representations as to its soundness and value." Of course, it appears that the court of appeals were merely being careless and was not terribly concerned with the reason for the first trading suspension, being more concerned with the statutory problem created by the fact that the S.E.C. had suspended trading for a period of more than one year by its practice of issuing successive ten-day trading suspension orders. Nevertheless, it is important to consider with care the reasons for the S.E.C.'s initial trading suspension and to determine whether the S.E.C. was merely being arbitrary or whether there was a justifiable basis for the trading suspension. A more complete statement than can be found in the memoranda included in the record of the facts and circumstances surrounding the trading suspension and the investigation by the Royal Canadian Mounted Police can be found at App. 176, which is a statement by a barrister appointed at the order of the Quebec Superior Court pursuant to a court ordered special general meeting of stockholders.

The particular facts of this case demonstrate that even in its initial suspension of trading of Canadian Javelin Ltd., the S.E.C. was acting on a purely arbitrary basis. Supposedly, the basis for the initial trading suspension was to provide the opportunity for disclosure to the American investing public that Canadian Javelin Ltd. and its officers were being investigated by the Royal Canadian Mounted Police. In the case of many corporations this might be considered to be a material fact although it must be noted that numerous corporations have been investigated by the United States Attorney General at one time or another and the S.E.C. has never been known to suspend trading in a security solely for that reason. In the case of Canadian Javelin Ltd., however, the investing

public already knew that it was being investigated by the Royal Canadian Mounted Police. This was announced in an artaicle in *The Wall Street Journal* dated December 21, 1972, which stated that "The Royal Canadian Mounted Police, acting under warrants requested by the province, seized more than one hundred cases of documents from the downtown Montreal headquarters of Javelin and from the offices and homes of five Javelin officials" (App. 157). Interestingly, in spite of having suspended trading in Canadian Javelin Ltd. on many occasions, the S.E.C. did not suspend trading at the time of this article in *The Wall Street Journal*. The decision to suspend trading when similar circumstances arose on April 29, 1975 can thus be seen as having been arbitrary. Moreover, Canadian Javelin Ltd.'s problems with the government of the Newfoundland, which was the reason for the search of its offices (App. 176), are well known to the American investing public and go back to at least 1969. See *Bonime v Doyle*, 416 F. Supp. 1372, 1376 (S.D.N.Y. 1976).

When this case was before the court of appeals, the S.E.C. contended that its year-long trading suspension was necessary to complete an investigation which resulted in the filing of a civil suit against the principal stockholder and the directors of Canadian Javelin Ltd. (but not against Canadian Javelin Ltd. itself). In its petition to this court,the S.E.C. stated (Pet. 3-4), "The trading suspension was lifted in May, 1976, when the Commission's investigation had resulted in the filing of a civil action, *Securities and Exchange Commission v. Doyle, et al*, Civ. Action No. 76-1882 (S.D.N.Y.)." However, the memoranda filed by the S.E.C. to be included in the record of this case demonstrate that there was little in the way of an ongoing investigation into the affairs of Canadian Javelin Ltd. during the period of more than one year when trading was suspended. Similarly, the approximately 10,000 pages of material Respondent has examined as a

result of a successful Freedom of Information Act request has disclosed virtually nothing concerning any investigation by the S.E.C. into the affairs of Canadian Javelin Ltd. during the 1975-1976 period. What the memoranda filed by the S.E.C. to demonstrate the reason for the trading suspension do show is that the S.E.C. was using the fact that a trading suspension was in effect as a negotiating tool to bring about the waiver of the assertion of various privileges by officers of Canadian Javelin Ltd., including the attorney-client privilege and the self-incrimination privilege. Essentially, the S.E.C. was offering to lift its suspension of trading in Canadian Javelin Ltd. stock provided that the management of Canadian Javelin Ltd. would cooperate with the S.E.C. Moreover, the event which brought about the termination of the trading suspension was not the filing of the injunctive suit by the S.E.C., as the S.E.C. now claims, but that the fact that in the Spring of 1976 an insurgent group of directors took over the management of Canadian Javelin Ltd. and agreed to cooperate with the S.E.C. The S.E.C. then intervened in proceedings in the Quebec Superior Court involving attempts by a group of stockholders and directors led by John C. Doyle, the principal stockholder in the company, to throw out the insurgent group of directors, which was led by William M. Wismer, a former Doyle ally and President of Canadian Javelin Ltd., which usurped control of Canadian Javelin Ltd. and which was undertaking measures to forestall a new election of directors due to the fact that the Doyle group had the votes. These proceedings are described in the report by the court appointed barrister (App. 159-177). The S.E.C. took the side of the Wismer group no doubt largely because of its hostility to Doyle arising from a number of circumstances including the fact that Doyle has been a fugitive from justice ever since he jumped bail in 1965 following an adverse decision

of the court of appeals in *United States v. Doyle,* 348 F. 2d 715 (2d Cir. 1965), *cert. denied* 382 U.S. 483 (1965). See "John Doyle Tells Why He Fled to Canada," *The New York Times,* July 26, 1965. The change in management which arose from the revolt by the Wismer group from Doyle's control came as a direct result of the pressure applied by the S.E.C. through its year-long trading suspension since it was clear that the S.E.C. was not prepared to lift that trading suspension until it secured the cooperation of Canadian Javelin Ltd. Ironically, the decision of the S.E.C. which denied Respondent's request for an administrative hearing and which explained the reasons for the trading suspension included the purported reason that "Civil suits are pending in Canada involving a dispute regarding control of the company" (App. 110). The memorandum did not disclose the fact that the S.E.C. had intervened in these suits on the side of one of the parties.

As noted previously, the appendix filed by the S.E.C. misrepresents the memoranda which constitute the record of this case. In the first petition filed by Respondent for review of trading suspension orders, the S.E.C. adopted the practice of deleting material from its own internal memoranda by apparently putting a piece of white paper over the material it sought to excise and then making a photocopy which was then filed in court. As a result, it was impossible to determine how many lines of material were left out or, in some cases, if any material was deleted whatever. In the second case, the S.E.C. adopted the somewhat less objectionable practice of marking with heavy black ink through everything it did not want the court of appeals to read. At least this method enables someone who reads the record to determine how many lines of text had been deleted. In this Court, the appendix indicates deleted material by "***", which hides the fact that in some instances the deleted material occupies many lines of text. No explanation has ever been offered by the

S.E.C. as to the reasons for deleting this material or what information the deleted material might contain. It is obvious that the memoranda filed by the S.E.C. as the "record" of this case do not meet the substantial evidence test, and indeed they do not constitute evidence at all. With this in mind, it is appropriate to turn to the memoranda themselves to see what they actually say. The first memorandum (App. 12) states that the Royal Canadian Mounted Police have "advised that they are conducting an extensive investigation into what they believe to be a manipulation of Canadian Javelin Ltd.'s common stock . . . They have also indicated that several United States residents and broker-dealers may be involved in the manipulation."

The language of this paragraph is qualified by the words "believe," "may," and "indicated." If the Royal Canadian Mounted Police had stated unequivocally that there was a manipulation and what the manipulation consisted of specifically, that would be one thing. However, the record here shows no such statement and there is no evidence to support the claim that there was a manipulation. It should also be noted that the term "manipulation" is itself a vague term and the S.E.C. is in apparent disagreement with this Court and with *Webster's International Dictionary* (2d ed. 1934) as to the meaning of the term "manipulative." See *Ernst & Ernst v. Hochfelder, supra,* 425 U.S. 185, 199, n. 21.

Subsequent memoranda repeat the statement that the Royal Canadian Mounted Police "was conducting an extensive investigation into what it believed to be a manipulation of Canadian Javelin's common stock . . . " (App. 20, 22, 24, 26). Thereafter the wording was changed slightly and the memoranda state that the Royal Canadian Mounted Police "was investigating an alleged manipulation of Canadian Javelin Ltd's common stock. . . " (App. 28, 31, 34, 37, 40, 42, 45, 48, 51, 54, 57, 60, 63, 66, 68, 70,

72, 74, 77, 80, 83, 86, 89, 92, 95, 98, 101, 104, 107, 111). Ironically, when the S.E.C. issued an opinion which provided the only published explanation of the reason for suspending trading in Canadian Javelin Ltd., it did not include the reason that Canadian Javelin Ltd. was being investigated by the Royal Canadian Mounted Police concerning an alleged manipulation (App. 109-110). It should also be pointed out that all of the memoranda just cited all contain a statement that there was "a public announcement by the Royal Canadian Mounted Police . . . " In fact, the Royal Canadian Mounted Police is known to be an exceptionally closed-mouthed agency, rarely makes public announcements and did not do so in this case and the statement contained in almost all of the memoranda which are included in the record of this case that there has been a "public announcement by the Royal Canadian Mounted Police" was a lie. It should be noted that the term "lie" means a statement made with intent to deceive. The true fact was the statement contained in the initial memoranda which said that the Royal Canadian Mounted Police had advised the S.E.C. that it was conducting an investigation. Incidently, counsel for Canadian Javelin Ltd. apparently believe to this day that the seizure of the files by the Royal Canadian Mounted Police may have occurred at the request of the S.E.C. itself. It is clear from a variety of circumstances, some of which are not part of the record of this case, that the S.E.C. was working closely with the Royal Canadian Mounted Police. However, in order to avoid any acknowledgement of this relationship even in internal memoranda prepared by members of the S.E.C. staff, and explanation was given that there had been a "public announcement" when in fact no public announcement had been made. Respondent was able to determine that no public announcement had been made while this case was pending before the court of appeals.

The memoranda which constitute the record of this

case invariably state that there is taking place an investigation into a "manipulation." As one turns the pages of these memoranda, one waits with anticipation to be told what the manipulation consists of specifically. However, in the memorandum dated December 5, 1975 (App. 72), which purports to give the reason for the trading suspension order dated December 12, 1975, one learns for the first time that the investigation by the Royal Canadian Mounted Police "for the most part, relates to activities in Canada prior to the January 27, 1975 resumption of trading in the U.S." The sentence immediately preceding this statement is almost completely deleted, but it appears from the context that the deleted material sets forth a confidential communication between the Royal Canadian Mounted Police and the S.E.C. It is noteworthy that during the period prior to the January 27, 1975 resumption of trading in the U.S., trading was, of course, suspended by the S.E.C. and consequently it is not possible that there was a manipulation taking place in the United States which adversely affected the interest of U.S. stockholders. Therefore, the reason which the S.E.C. gave for its initial suspension of trading on April 29, 1975 ultimately proved to have had no effect on trading markets in the United States. In this regard, it is important to note that United States securities laws do not extraterritorial application. See Restatement (Second) of the Foreign Relations Law of the United States, §18. Cf. *Racaman v. Barish,* 408 F. Supp. 1189, 1195, n. 3 (E.D. Pa. 1975).

Commencing with the memorandum dated July 21, 1975 (App. 34) and ending with the memorandum dated March 4, 1976 (App. 98-99), every memorandum included in the record indicates that an investigation was being undertaken by the S.E.C. These memoranda all state:

> "The investigation to date has revealed that from the commencement of trading on January 27, 1975 until the

Commission's trading suspension on April 29, 1975 CJV's stock has been continually manipulated on the Amex as well as several Canadian stock exchanges. The manipulation appears to involve Americans, Canadians and Panamanians. It also appears that John C. Doyle ("Doyle"), CJV's founder, former chairman of the executive committee and currently a director has been behind the manipulation."

However, none of these memoranda set forth what, if any, specific manipulative activity occurred. Aside of vague references to manipulative activity, the major theme of these memoranda concerns the efforts of the S.E.C. staff to investigate the affairs of Canadian Javelin Ltd. It appears that problems developed in the course of this investigation, most of which were related to the fact that Canadian Javelin Ltd. is a Canadian corporation, has no direct ties with the United States other than its listing on the American Stock Exchange and all of its officers, directors and accountants reside outside the territorial boundaries of the United States. As a result, the S.E.C. was not in a position to exercise its subpoena power and was forced to seek, unsuccessfully as it turned out, the cooperation of these individuals. The obvious *quid pro quo* for the arrangement proposed by the S.E.C. was that if the officers, directors, and accountants for Canadian Javelin Ltd. would cooperate by meeting with and giving sworn testimony before members of the S.E.C. staff and by agreeing to waive their Fifth Amendment rights and their attorney-client privilege, the S.E.C. would consider lifting the trading suspension. The memoranda trace the course of the ultimately futile efforts to secure the cooperation of Canadian Javelin Ltd. and associated persons. The May 6, 1975 memorandum (App. 14) states that the S.E.C. staff had met with counsel for Canadian Javelin Ltd. and had requested a press release. Since Canadian Javelin Ltd. is known to issue a press release on almost every occasion, it

is obvious that the S.E.C. was not seeking just any press release, but rather wanted a press release which would admit guilt. Although the May 6, 1976 memorandum states, "We anticipate receiving their press release within a few days," and the May 12, 1975 memorandum repeats this statement (App. 17), the May 23, 1975 memorandum says (App. 20), "Company counsel previously indicted [sic] that they intend to submit an *appropriate* release but have not yet done so" (emphasis supplied). This sentence is repeated in the next three memoranda (App. 22, 24, 26). Note that the word "indicted" is used in each of these memoranda. By the time of the July 1, 1975 memorandum (App. 28-29), the S.E.C. staff had apparently abandoned its hope of obtaining from Canadian Javelin Ltd. a press release admitting culpability. This and the four preceding memoranda contain a statement that Canadian Javelin Ltd. is a "chronic violator" (App. 20, 22, 24, 26). The July 1, 1975 memorandum also indicates that by this time the S.E.C. staff had gotten around to taking depositions and exchanging information with the Royal Canadian Mounted Police (App. 28). This memorandum also states the significant fact that on June 27, 1975 the S.E.C. staff met with representatives of the American Stock Exchange who agreed to continue their own trading suspension "until the Commission is in a position to reveal the extent of the manipulation and its participants" (App. 28), a circumstance which apparently has not occurred to this day since the American Stock Exchange has continued its trading suspension even to the present.

The July 1, 1975 memorandum also states that the S.E.C. staff had met with "special counsel of the company" (App. 29). This reference is somewhat misleading because the "special counsel" to whom the memorandum obviously refers is one Meyer Eisenberg, a former employee of the S.E.C. who maintains his law office in Washington, D.C. and who was appointed by the order

of United States District Judge Lloyd F. MacMahon at the request of the S.E.C. to represent Canadian Javelin Ltd. in proceedings before the Canadian courts. This appointment of special counsel took place as a result of an injunction obtained by the S.E.C. in *S.E.C. v. Canadian Javelin Ltd.*, 73 Civil 5074 (S.D.N.Y.). Litigation arising a result of Meyer Eisenberg's appointment, over the objections of Canadian Javelin Ltd., are alluded to in the memoranda dated December 19, 1975 (App. 75) thru March 4, 1976 (App. 78-81, 84, 86-87, 89-90, 92-93, 95-96, 98-99). Obviously, a meeting by the S.E.C. staff with Meyer Eisenberg under these circumstances was not likely to reveal any new information about Canadian Javelin Ltd.

According to the memorandum of July 1, 1975, the reason for meeting with Meyer Eisenberg was to request him to investigate several transactions involving Canadian Javelin Ltd. "during the height of the alleged manipulation" and to arrange for a meeting with Mr. Doyle (App. 29). This memorandum also states that:

> "The staff has traced Mr. Doyle's telephone in Nassau to have been frequently called by certain persons believed to have been directly involved with wash-trading during the relevant period. Furthermore, company counsel has not yet submitted an appropriate press release as was recently promised. The staff hopes to conclude the investigation shortly after it meets with Mr. Doyle."

The July 15, 1975 memorandum (App. 31-32) is identical to the July 1, 1975 memorandum. The July 21, 1975 and the August 1, 1975 memoranda (App. 34-35, 37-38) are different. They state:

> "Soon after the staff began issuing subpoenas, most of the U.S. residents who participated in the scheme fled to Panama. Recently an old time securities violator and close associate of Doyle refused to testify, invoking his 5th Amendment rights. Doyle has also recently indicated, through counsel, that he is reluctant to testify in this matter.
>
> The staff is communicating with the Quebec Securities Commission, the Grand Cayman police, and the Bahamian authorities and plans to meet with several company officials in the near future. It is anticipated that this investigation will conclude soon thereafter."

The August 1, 1975 memorandum (App. 40) states, for the first time, that the S.E.C. staff has "requested a meeting with the president of CJV, Canadian counsel for CJV, and the partner in charge of Lee Martin, the company's independent auditors. The staff has also been recently informed that Doyle is not receptive to a meeting with the staff." However, the next memorandum, dated August 21, 1975 states (App. 42-43):

> "Canadian counsel for CJV has informed the staff that approval of the board of directors is necessary in order for the president of CJV and its counsel to testify before the Commission and to furnish information concerning sensitive areas involving corporate activities. For this reason they have sought postponements concerning their appearances and they anticipate testifying within the next week or so."

The September 2, 1975 memorandum contains the same paragraph (App. 45-46), apparently forgetting that by that time more than a week had passed. The September 11, 1975 memorandum changes the text by stating that the scheduled appearances "have been postponed" (App. 49). Finally, the October 1, 1975 memorandum makes it clear that the efforts by the S.E.C. staff to obtain testimony and other evidence on this basis have proven futile. The memorandum states that on September 28, and 29, 1975 the board of directors of Canadian Javelin Ltd. met in Costa Rica and although it agreed to furnish information to the S.E.C. staff, it "refused to waive any attorney-client privilege" (App. 55). This arrangement was ap-

parently unacceptable to the S.E.C. Cf. *S.E.C. v. Csapo*, 533 F. 2d 7 (D.C. Cir. 1976). This memorandum also states that neither the president of Canadian Javelin Ltd. nor Doyle nor his son intended to meet with the S.E.C. staff and that the "staff intends to pursue every available recourse to compel the testimony of these witnesses" (App. 55).

The text of the October 1, 1975 memorandum is repeated verbatum in the October 10, 1975 memorandum (App. 57-58), which constitutes the record of the order suspending trading dated October 15, 1975 (App. 56). October 15, 1975 was, coincidentally, the date of the first decision of the court of appeals reported at 527 F.2d 11 regarding the S.E.C.'s trading suspension orders. It is apparent that by this time the S.E.C.'s investigation, to the extent that it ever existed, had essentially ground to a halt. Succeeding memoranda deal with efforts by the S.E.C. staff to pursue various paths. The tone of these memoranda can be compared to the repeated assertion of Mr. Macaber, the Dickens character, that "something will turn up." The October 17, 1975 memorandum complains that Canadian Javelin Ltd. had disengaged its Washington, D.C. law firm of Steptoe & Johnson from representing it before the S.E.C. (App. 60). The memorandum implies that this occurred because Steptoe & Johnson had "recommended that CJV and its officers and directors cooperate with the staff in this investigation." It also complains that Canadian counsel for CJV had decided to retain counsel before meeting with the staff of the S.E.C. (App. 60). The next memorandum, dated October 31, 1975, says for the first time that Canadian counsel for Canadian Javelin Ltd., presumably the same counsel upon whom in earlier memoranda the S.E.C. claimed to have been relying to provide information (App. 14, 17, 20, 22, 24, 26), may himself "be involved in the manipulation" (App. 64). The memorandum which follows, dated

November 7, 1975 (App. 66), in addition to the two introductory paragraphs which have by now become standard in all these memoranda, does nothing more than repeat prior statements to the effect that the S.E.C. staff is attempting to meet with Canadian counsel for Canadian Javelin Ltd. Everything else in the memorandum is blacked out. The next memorandum, dated November 18, 1975, states that the attorney in question "no longer intends to discuss the matter with the staff" (App. 68). Finally, in the November 28, 1975 memorandum everything is blacked out with the exception of the standard two introductory paragraphs (App. 70). The next memorandum, which has been discussed *supra*, states that the Royal Canadian Mounted Police investigation concerns, for the most part, activities in Canadian prior to the resumption of trading in the United States (App. 72). The following memorandum, dated December 19, 1975, states for the first time that the S.E.C. Division of Enforcement has decided "that supervisory personnel at several U.S. broker-dealers should be interviewed in order to resolve any participation in the manipulation" (App. 74). No explanation is given as to why these broker-dealers had not been interviewed previously during the by now more than seven month period in which the suspension had been in effect. This memorandum also complains about a suit brought against Canadian Javelin Ltd., the S.E.C. and Meyer Eisenberg by a director of Canadian Javelin Ltd. The next memorandum, dated December 29, 1975, repeats prior material and refers to the fact that Meyer Eisenberg had been appointed by court order to represent Canadian Javelin Ltd. in that suit (App. 78). The January 9, 1976 memorandum repeats the by now three standard introductory paragraphs and adds nothing else (App. 80-81). However, the January 16, 1976 memorandum provides new material by stating that on January 14, 1976 the Royal Canadian Mounted Police had filed a criminal information against Doyle and four

others in St. John's, Newfoundland (App. 83). From this it appears that the investigation by the Royal Canadian Mounted Police proved more productive than the investigation initiated by the S.E.C. The January 23, 1976 memorandum thereafter complains (App. 87):

> "To date, there has been no public release by the company concerning the RCMP investigation or the recent criminal informations filed in St. John's, Newfoundland. Moreover, CJV continues to refuse to cooperate with the S.E.C. staff."

The next four memoranda, dated February 5, 1976, February 12, 1976, February 26, 1976 and March 4, 1976 contained the three standard paragraphs and nothing else (App. 89-90, 92-93, 95-96, 98-99). The following memorandum, dated March 19, 1976 (App. 101-102), is highly significant. It states that on March 11, 1976 the S.E.C. approved the filing of an injunctive suit in federal court. This action was subsequently filed as *S.E.C. v. Doyle et al, supra.* However, since the complaint alleged that all of the named defendants were either persons who were not residents of the United States or corporations which had no ties with the United States and since Canadian Javelin Ltd. itself was not named as a defendant, it is not surprising that as it turned out none of the defendants appeared in that action until more than a year later. Indeed, it was not until a year after the complaint had been filed that the S.E.C. got around to attempting to effect service of process. The defendants in the suit filed by the S.E.C. were identical to the defendants in the criminal information filed in Canada except that the suit instituted by the S.E.C. added as defendants various corporations controlled by the individual defendants. In spite of the virtually insurmountable difficulties the S.E.C. must have known that it was facing in prosecuting that action, the March 29, 1976 memorandum states (App. 101), "The

staff believes that with the filing of this complaint, the public purpose for which the suspension of trading of CJV stock was instituted on April 29, 1975 will have been amply served." The memorandum also states that the S.E.C. staff has the "present expectation that the suit will be filed . . . on or before the expiration of the current trading suspension" (App. 102). It turned out, however, that the S.E.C. did not institute suit as quickly as it thought it would be able to and the April 20, 1976 memorandum states that the lifting of the trading suspension was being held up for that reason (App. 111-112). Meanwhile, in an unexpected development, a Canadian court ordered a reorganization of the board of directors and the memoranda dated March 26, 1976 and April 2, 1976 reflect this fact (App. 104-105, 108). It is clear, however, that this development was not rationally related to the S.E.C.'s decision to continue the trading suspension, particularly since the April 2, 1976 memorandum states (App. 108), "New management has informed us that they wish to cooperate with the staff, waive an attorney-client privilege, and make available all CJV officers, directors and employees to the staff."

There was, however, one remaining matter which had gone unmentioned in all of these memoranda which was the fact that Respondent had been pursuing his judicial remedies for more than one year in order to force the suspension of trading to be lifted. In its first decision dealing with trading suspension, the court of appeals had, in effect, ordered the S.E.C. to give Respondent some sort of administrative hearing and on March 11, 1976 the S.E.C. had received a petition from Respondent conforming to the S.E.C.'s requirements. Because of this, rather than lift the trading suspension without responding to Respondent's petition, the S.E.C. decided to continue the suspension for one more ten-day period. The memoran-

dum dated April 9, 1976, which discusses this decision, states (App. 119):

> "As the Commission will recall, the United States Court of Appeals for the Second Circuit, in October, 1975, rejected Mr. Sloan's attack on summary trading suspension based upon the Commission's representation that we would give a person who claimed to be aggrieved by such a suspension an opportunity to be heard (*Sloan v. Securities and Exhcnage Commisison*, C.A. 2 no. 74-2457). The court indicated at that time that such a hearing should result in a record which could later be reviewed on appeal if that became necessary."

As a result, the S.E.C. issued its last trading suspension order which was published in full text in the Federal Register (App. 109-110). It constitutes the only time the S.E.C. ever made a public statement as to the reasons for its year-long trading suspension of securities of Canadian Javelin Ltd. This order was couched in the same vague terms which are characteristic of the memoranda prepared by the S.E.C. staff but it gave different reasons for the trading suspension, such as the reason that Canadian Javelin Ltd. was delinquent in filing its 10-K report (App. 110). It dismissed the facts alleged in Respondent's affidavit in support of a request for an administrative hearing as "speculation" (App. 110).

From the above analysis, it should be clear that the orders suspending trading in Canadian Javelin Ltd. were unjustified, arbitrary, capricious, and were not supported by substantial evidence and, hence, must be set aside. What emerges from a reading of all the documents which the S.E.C. has included in the record is an unsubstantiated belief by unidentified members of the S.E.C. staff that persons connected with Canadian Javelin Ltd. have somehow engaged in a stock manipulation and this belief is coupled with the failure of Canadian Javelin Ltd. and certain associated persons to "cooperate" with the S.E.C.

staff. However, there exists no legal obligation for any person to "cooperate" with the S.E.C. The S.E.C. has vast powers, including the power to issue subpoenas and to institute actions for injunctive relief but no free government has ever devised a means, short of torture, which is prescribed by the Eighth Amendment, to create the power to compel persons to "cooperate." The S.E.C. apparently believes that the failure to cooperate is a sign of guilt. However, some of the world's largest corporations refuse to cooperate with the S.E.C. and refuse to comply with S.E.C. rules and nevertheless the S.E.C. does not suspend trading in their securities. For example, Hoffman LaRoche and Co., a Swiss pharmaceutical concern, has shares which are traded actively in the United States over-the-counter market at a current price of $44,500 bid —$48,000 offered per share. This corporation refuses to file the reports required by S.E.C. Rule 12g3-2(b), and although it follows the European practice of publishing its balance sheet in European newspapers once a year, it refuses to provide financial disclosure of the type required by the S.E.C. Nevertheless, the S.E.C. has not suspended trading in the shares of Hoffman LaRoche and Co. nor has it taken any other action against that corporation and is not likely to do so.

There is a broader issue involved here which goes beyond the specific trading suspension orders which happen to be involved in this case. In its petition for writ of certiorari, the S.E.C. stated (Pet. 5):

> "The decision below, by holding that the Commission has no statutory authority to issue consecutive suspension orders, eviscerates one of the principal tools available to the Commission for protecting the investing public against suspended fraud or manipulation of the market for particular securities."

What the S.E.C. is stating quite clearly is that it wants

the power to issue consecutive trading suspension orders. The S.E.C. claims that it needs this power for the purpose of "protecting the investing public against suspected fraud or manipulation of the market for particular securities." However, the record the S.E.C. has established generally in issuing trading suspension orders demonstrates that this is not the case. The reason most often given by the S.E.C. for a trading suspension is a delinquency by the corporation in filing its 10-K report. On the surface, this might seem to provide a valid reason for a trading suspension. However, it must be remembered that once a trading suspension order has been issued, Rule 15c2-11 comes into play and most of the securities which have been suspended from trading for the reason of a 10-K delinquency have never resumed trading. At the same time, the S.E.C. never institutes proceedings under § 32(b), 15 U.S.C. § 78*ff*(b), which is the Congressionally mandated remedy which provides for a fine of $100 for each and every day that a 10-K report is filed late. Thus, the S.E.C. never punishes the corporation and corporate officers who are actually responsible for the late 10-K filings but instead punishes the innocent stockholders by summarily suspending trading in their securities. The S.E.C.'s practice of suspending trading in securities *en masse* which are delinquent in filing their 10-K reports originated in Securities Exchange Act Release No. 10127, 1 SEC Docket No. 12, p. 7 (April 26, 1973) which announced the simultaneous suspension of trading in nine securities. This practice is continued with Securities Exchange Act Release No. 10138, 1 SEC Docket No. 15, p. 3 (May 7, 1973) (twelve securities); Securities Exchange Act Release No. 10321, 2 SEC Docket 232 (August 3, 1973) (five securities); Securities Exchange Act Release No. 10536, 3 SEC Docket 166 (December 4, 1974) (eight securities); Securities Exchange Act Release No. 10657, 3 SEC Docket 615 (February 26, 1974) (five securities);

Securities Exchange Act Release No. 10660, 3 SEC Docket 616 (February 27, 1974) (four securities); Securities Exchange Act Release No. 10662, 3 SEC Docket 617 (February 28, 1974) (five securities); Securities Exchange Act Release No. 10732, 4 SEC Docket 82 (April 11, 1974) (48 securities) and many others. In addition to releases which specified a delinquency in the filing of a 10-K report, a number of releases announced the suspension of trading in a group of securities on the grounds of a vague statement that "the subject issuers failed to comply with the reporting provisions of the Exchange Act resulting in a lack of current and accurate information available to the public." See e.g. Securities Exchange Act Release No. 10269, 2 SEC Docket 98 (July 5, 1973) (four securities). It is noteworthy that those releases which provided detailed information as to the degree of delinquency in filing a 10-K or other required report made it clear that not all companies were equally delinquent or had become delinquent during the same time period. For example, Securities Exchange Act Release No. 10536, 3 SEC Docket 166 (December 4,. 1973) announced that trading in AIM Companies was being suspended because it had failed to file its 10-K annual reports for 1971, 1972 and 1973 as well as its 10-K quarterly reports for 1971, 1972 and 1973, whereas, at the same time, this release announced that trading in Mountain Equities Inc. was being suspended solely for failure to file its 10-Q quarterly reports for 1973. In short, what the S.E.C. did was merely take an arbitrary group of companies which were delinquent in filing their 10-K and 10-Q reports to various degrees and suspended trading in them simultaneously. Securities of other corporations which were equally delinquent were not suspended. The purpose of this was clearly to frighten corporations which were delinquent in their 10-K and 10-Q filings into bringing their filings up to date. The problem

with this is that because of the haphazard methods of the S.E.C., corporations which were seriously delinquent in filing their 10-K and 10-Q reports often were not suspended from trading for a long time, whereas other corporations which had only become delinquent recently were suspended and as a result, it became impossible to predict when the S.E.C. would suspend trading in a security. It may be that the S.E.C. deliberately intended this result, since if a corporation knew precisely how delinquent it would have to be before the S.E.C. would suspend trading in its stock, it could simply defer filing its reports until a few days before the time to suspend had arrived. The drawback to this is that the scattershot methods adopted by the S.E.C. created a situation of instability and unpredictability in the securities markets, which is precisely what the existence of the S.E.C. was intended to prevent.

No better example of this can be found than in the trading suspensions of Canadian Javelin Ltd. which are the subject of the instant case. At this point it should be noted that Respondent does not contend that Canadian Javelin Ltd. is without sin. To the contrary, Respondent considers himself to be a victim of a securities fraud perpetrated by Canadian Javelin Ltd. and its officers, including Doyle and Wismer, among others. At the same time, had it not been for the S.E.C. and in particular the arbitrary way in which the S.E.C. applies its trading suspension power, Respondent would likely not have suffered serious financial loss from trading in Canadian Javelin Ltd. This is because of the fact that at the time that there was an active manipulation of the market in Canadian Javelin Ltd., the S.E.C. did not suspend trading although it had facts available which established that fraudulent conduct was taking place whereas later, after the manipulation had come to an end, the S.E.C. chose to suspend trading. If the S.E.C. had not had the power to suspend trading, Respondent would not have felt a false

sense of security in believing that if an egregious fraud took place, the S.E.C. would suspend trading in Canadian Javelin Ltd. At the same time, had the S.E.C. not exercised its trading suspension power in November, 1973, by which time the market manipulation had come to an end, Respondent might have been able to recoup his losses during the course of normal trading activity. Finally, had the S.E.C. suspended trading at the height of the market manipulation, Respondent would have avoided a loss in excess of $123,000 plus brokerage commissions. This can be seen from facts which can be established from the record of the various court proceedings involving Respondent and Canadian Javelin Ltd. and from letters Respondent wrote to the S.E.C. itself during the height of the market manipulation.

Included as Appendix F and Appendix G to this brief are letters written by Respondent to S.E.C. staff attorney Larry Grimes of the Washington, D.C. office of the S.E.C. Larry Grimes was the attorney then in charge of the investigation of Canadian Javelin Ltd. These letters can be found in the files of the S.E.C. to which Respondent was given access pursuant to the Freedom of Information Act. This fact establishes that the S.E.C. received these letters. Nevertheless, the S.E.C. never responded to either letter even though, as the Freedom of Information Act material demonstrates, the S.E.C. almost routinely replies to letters of this sort. The second letter, dated August 10, 1973, stated, "The purpose of this letter is to make a formal complaint concerning trading activity in Canadian Javelin Ltd. ("CJV"), and to request that the Commission suspend trading in this security. I also request that the Commission investigate and conduct hearings concerning its trading activity. The reasons for this request are as follows:"

It can be readily seen from this letter and from the enclosures to the previous letter dated July 22, 1973 that

an egregious fraud was occurring at this time. Specifically, a UPI news release dated June 20, 1973, which is included in Appendix F, stated that "Panama has postponed for at least two months, while it draws up a new mining code talks with Canadian Javelin Ltd. for a major mining concession, Commerce and Industry's Minister Fernando Manfredo said Wednesday." The release also quote Manfredo as saying, "We do not have sufficient information to support the claims of Canadian Javelin that this is the biggest copper deposit in the world" and that the Panamanian government "is now thinking about mining the copper reservers itself." Nevertheless, on June 22, 1973, only two days later, Canadian Javelin Ltd. issued a press release, which is included in Appendix G, which said that "Minister Fernando Manfredo's statement made it clear and confirmed that the company has delineated one of the world's largest copper mines" and that "the company is now moving from the exploration stage to that of construction." There is simply no way to reconcile these two conflicting statements. Canadian Javelin Ltd. was claiming that it was in the process of constructing one of the world's largest copper mines and that it possessed a concession giving it the right to commence this construction and at the same time a minister of the government of Panama was stating that Canadian Javelin Ltd. would have to wait two months before beginning negotiations for the major copper mining concession which Canadian Javelin Ltd. was claiming it already had. The fact is that Canadian Javelin Ltd. was claiming to own the mineral rights to an area of the Andes Mountains of Panama whereas the mineral rights were, in fact, owned by the government of Panama. This circumstance, which was pointed out by Respondent in his letters to the S.E.C. dated June 23, 1973 and August 10, 1973 was not generally known to the American investing public until the publication of an article in *The Wall Street Journal* dated October

25, 1973 entitled, "Now You See It: Canadian Javelin Doesn't Have Gold Rights In Panama, Nation Says; Firm Disputes That" and a further article in *The Wall Street Journal* dated October 30, 1973 entitled, "Canadian Javelin admits its announcement of Panama Mineral Rights was 'premature'." Subsequently, on November 29, 1973, the S.E.C. instituted suit against Canadian Javelin Ltd. and simultaneously suspended trading in its securities. The allegations of the complaint and the basis given for that trading suspension were precisely the facts and circumstances set forth in the two letters which Respondent had written to the S.E.C. three and four months earlier. The problem was that by the time the S.E.C. got around to suspending trading in November, 1973, the manipulation was over. The American Stock Exchange had instituted its own trading suspension on October 25, 1973. By the time of the S.E.C.'s trading suspension on November 29, 1973, the true facts had been published by *The Wall Street Journal* and more than a month had passed with no trading in Canadian Javelin Ltd. either on an exchange or in the over-the-counter market. Meanwhile, Respondent had suffered substantial losses. During the period from July 5, 1973 until July 26, 1973 the price of Canadian Javelin Ltd. rose from 7-1/8 to 14-5/8 on the American Stock Exchange. Respondent was short 33,400 shares. Respondent was thus caught in a short squeeze and was powerless to do anything about it other than write letters to the S.E.C. The meteoric rise in price of Canadian Javelin Ltd. occurred as a direct result of the fraudulent press release dated June 22, 1973 and a second fraudulent press release issued by Bison Petroleum & Minerals, Ltd., a subsidiary of Canadian Javelin Ltd., dated July 5, 1973, which is also included in Appendix G. After hitting a high of 14-5/8 on July 26, 1973, Canadian Javelin Ltd. leveled off and traded in the $13-14 range during the month of August. Due to the fraudulent state of the market which

had existed at that time, Respondent did not buy or sell any Canadian Javelin Ltd. shares during this period but eventually got bought in on most of his short position, thereby sustaining substantial losses. The point is that the S.E.C. knew everything it needed to know to suspend trading in July or August, 1973, and had it done so Respondent and the investing public would have avoided serious financial losses. Instead, the S.E.C. allowed trading in Canadian Javelin Ltd. to continue through October 25, 1973, a period of great activity in the market for Canadian Javelin Ltd. during which Canadian Javelin Ltd. was often one of the ten most actively traded issues on the American Stock Exchange.

What happened here is typical of the *modus operandi* of the S.E.C. It is unusual for the S.E.C. to suspend trading during a period in which an actual manipulation is taking place. Indeed, Respondent is not aware of even a single instance where the S.E.C. has taken such an action. Instead, the S.E.C. does not act until the manipulation is over and with the benefit of 20-20 hindsight suspends trading because of a manipulation which took place at some time in the past. An example of this can be found in the S.E.C.'s own brief. On page 30, n. 11 of its brief, the S.E.C. cites as an example its suspension of trading in Power Conversion, Inc. Power Conversion Inc. was a notorious securities fraud. While the fraud was taking place, everybody knew about it but the S.E.C. did nothing. Eventually, the bubble burst and, as the brief of the S.E.C. notes, the price declined in less than two days from $39.75 to $5.00. With Power Conversion trading at $5 per share, the market manipulation was effectively over. Ironically, at that very point, the S.E.C. decided to step in and suspend trading. *The Wall Street Journal* subsequently reported that as a result of the S.E.C.'s suspension of trading in Power Conversion, Inc. four brokerage firms went into court ordered liquidation and

another sustained losses in excess of $1,000,000.[47] The public is under the impression that the S.E.C. suspends trading when the price of a corporation's stock goes up without any corporate development justifying the price rise. This is because the S.E.C. often states that it suspends trading for this reason. However, the fact is that any time the S.E.C. suspends trading in a security for this reason, it waits to do so until the price has plummeted back down again. In short, apparently as a matter of policy, the S.E.C. does not take the unpopular action of suspending trading in a security at a time when the price is rising but rather suspends trading in a security at a time when the price is falling. As Respondent pointed out in his affidavit in support of his petition to the S.E.C. (App. 117-118), this was precisely the case each time the S.E.C. suspended trading in Canadian Javelin Ltd. In view of the notorious history of abuse of the trading suspension power on the part of the S.E.C., the S.E.C. should not be heard to claim as it does in this Court that the exercise of the trading suspension power is "one of the principal tools available to the Commission for protecting the investing public," when in fact the principal use for this "tool" is to bludgeon corporations and individuals into "cooperating" with the S.E.C. by consenting to injunctions and the like.

Under §25(a)(5) of the Securities Exchange Act, 15 U.S.C. 78y(a)(5), if the findings of the S.E.C. are not supported by substantial evidence, they must be set aside. Regardless of how this case is approached, the S.E.C. has not sustained the burden of proof as required by the Administrative Procedure Act, 5 U.S.C. §556(d), and clearly the findings and orders of the S.E.C. are not supported by

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47. See *The Wall Street Journal*, "Volatile Issue: How Numerous Fingers Became Badly Burned Handling a Hot Stock," Jan. 2, 1973, p. 1 col. 6, p. 19 col. 5.

substantial evidence. Hence, the thirty-seven orders suspending trading in Canadian Javelin Ltd. must be vacated.

V

SECTION 12(K) OF THE SECURITIES EXCHANGE ACT, WHICH AUTHORIZES THE SECURITIES AND EXCHANGE COMMISSION "SUMMARILY TO SUSPEND TRADING IN ANY SECURITY" WHENEVER "IN ITS OPINION THE PUBLIC INTEREST AND THE PROTECTION OF INVESTORS SO REQUIRE" IS UNCONSTITUTIONAL

The decision of the court of appeals held that a single ten-day trading suspension did not violate the Constitution. It found it unnecessary to reach the question of whether a more lengthy trading suspension violated the Constitution in view of its resolution of the statutory question. If this Court agrees with the S.E.C. that the determiantion by the court of appeals of the statutory question was erroneous, it must proceed to a determination of the question of the constitutionality of the S.E.C.'s exercise of its trading suspension power.

The decision of the court of appeals stated (Pet. 14a-15a):

> "The petitioner also claims that his Constitutional rights were violated by the series of suspension orders because he was never afforded notice and an opportunity for a hearing. It is not necessary to deal with this point as a Constitutional violation, however, because the procedures adopted by the S.E.C. plainly transgressed the statutory provisions. For a single ten-day suspension no prior notice or hearing is required because the proceeding is summary in nature and because the emergency aspect of the order,

> issued to protect the public interest and give protection to investors, makes it necessary."

There are several Constitutional problems involved in the S.E.C.'s exercise of its trading suspension power. A trading suspension effectively brings to a halt all trading regardless of whether or not interstate commerce is involved. Thus, the trading suspension power exceeds the power vested in Congress by the commerce clause of the Constitution and hence is unconstitutional. In addition, in cases such as *Fuentes v. Shevin*, 407 U.S. 67, 90-93 (1972) and *Mitchell v. W.T. Grant*, 416 U.S. 600 (1974), this Court has held that summary governmental action affecting property rights is unconstitutional unless an immediate hearing is available and even then in extraordinary situations. Other decisions make it clear that the "extraordinary situations" must involve an important governmental interest. For example, an important governmental interest has been held to exist when necessary to protect the public from contaminated food, from misbranded drugs, to aid the collection of taxes, or to aid the war effort. See *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 679 (1974). A question thus arises as to whether the need to suspend trading in a security is a sufficiently important governmental interest. It is submitted that the desire of a governmental agency to suspend trading a security, regardless of how strong that desire might be, does not reach the level of importance to the government as the need to collect taxes, for example. Moreover, it is difficult to imagine the kind of "extraordinary situation" which must exist for a trading suspension to be constitutionally valid. Certainly, there has been no showing that an extraordinary situation existed in connection with the trading suspensions which are the subject of the instant case. Therefore, these particular trading suspensions were unconstitutional. In addition, a trading

suspension is unconstitutional because an aggrieved party is not entitled to a hearing. For example, in the instant case, Respondent requested that the S.E.C. provide him the opportunity for a hearing and this request was denied and had it not been for the prior decision of the court of appeals it would not even have been entertained. Therefore, the exercise of the trading suspension power, in this case at least, was unconstitutional.

Another constitutional defect to the trading suspension power is that it constitutes an unconstitutional delegation of legislative power. A trading suspension is a legislative act as defined in *Premis v. Atlantic Coast Line Co.*, 211 U.S. 210, 226 (1908). In cases too numerous to cite, this Court has held that a delegation of legislative power to an administrative agency without appropriate standards is unconstitutional. See e.g. *Schechter Poultry Corp. v. United States*, 295 U.S. 495, 529 (1936). In the case of a trading suspension, the only standard provided by Congress is that the "public interest and the protection of investors so require." However, a determination of what constitutes the "public interest" is exclusively within the province of Congress. From this Court's court decision in *National Cable Television v. United States*, 415 U.S. 336, 342 (1974) it is clear that a delegation to an administrative agency of the authority to make a determination of what constitutes the "public interest" is unconstitutional. This was again explained in *Federal Energy Administration v. Algonquin SNG, Inc.*, 426 U.S. 548, 559, n. 10 (1976). In *National Cable Television, supra*, this Court held that the delegation to an administrative agency of the authority to take into consideration the "public policy or interest served and other pertinent facts," was sufficiently open-ended as to be an unconstitutional delegation of legislative authority. It is apparent that the delegation to the S.E.C. of the authority to determine what is "necessary in the public interest and for the protection of investors" is even more open-ended and indeed Congress has provided no standards whatever. Indeed, the difficulty experienced by Congress in forcing the S.E.C. to limit the duration of its trading suspension orders demonstrates the existence of a fundamental constitutional defect in the delegation of the trading suspension power. Hence, the trading suspension power is an unconstitutional delegation of legislative power. The exercise of the trading suspension power is also unconstitutional in that it fails to provide for certain constitutionally protected rights such as the right to confrontation and cross-examination and, in addition, it is unconstitutional as being arbitrary and capricious. This can be seen from this Court's decision in *Greene v. McElroy*, 360 U.S. 474, 496-497 (1959), where this Court stated:

> "Certain principles have remained relatively immutable in our jurisprudence. One of these is that where governmental action seriously injures an individual, and the reasonableness of the action depends on factfindings, the evidence used to prove the Government's case must be disclosed to the individual so that he has an opportunity to show that it is untrue. While this is important in the case of documentary evidence, it is even more important where the evidence consists of the testimony of individuals whose memory might be faulty or who, in fact, might be perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy. We have formalized these protections in the requirements of confrontation and cross-examination. They have ancient roots. They find expression in the Sixth Amendment which provides that in all criminal cases the accused shall enjoy the right 'to be confronted with the witnesses against him.' This Court has been zealous to protect these rights from erosion."

This decision puts its finger on the heart of the problem in dealing with the S.E.C. The members of the staff of the Division of Enforcement of the S.E.C., who are

responsible for the trading suspension orders which are the subject of this case and who, for that matter, are responsible for the malicious prosecution of Respondent in two injunctive actions and one administrative proceeding, have demonstrated themselves to be masters of the "Big Lie" technique. The record of the cases in question shows that members of the S.E.C. staff are, indeed "perjurers and persons motived by malice, vindictiveness, intolerance, prejudice and jealousy." As Judge Haight observed in a recent case dealing with the activities of some of these same individuals, "It is a sad irony that representatives of a governmental agency dedicated to the prevention of fraudulent and misleading statements fell into this particular pattern of behavior." *United States v. Fields*, CCH Fed. Sec. Law Rep. ¶96,074 [current binder]. When Congress delegated to an independent administrative agency the power summarily to suspend trading in a security, it opened up the very possibility which has now arisen where the persons in a position to exercise that power can, if improperly motivated, cause serious harm to individuals and yet not be held accountable for their acts. One of the decisions of this Court has characterized the potential for misconduct on the part of the S.E.C. to the "intolerable abuses of the Star Chamber." *Jones v. S.E.C.*, 298 U.S. 1, 25-26 (1936). It has taken forty-four years from the time the S.E.C. was created by the enactment of the Securities Exchange Act of 1934 until the present date for the S.E.C. evolve into the agency it now is, but considering the broad powers given the S.E.C., of which the power summarily to suspend trading in a security is probably the one most rife with potential for abuse, it was inevitable that eventually power-hungry and improperly motivated individuals would get their hands on the reigns of this power and bring about the abuses which are the subject of this case. A few examples of the abuses created by the arbitrary exercise of the trading suspension power with respect to Canadian

Javelin Ltd. coupled with what Goldstein and Mangrino referred to as the S.E.C.'s "general but pragmatic policy of 'selective' enforcement" (Goldstein & Mangrino, *supra*, 15 N.Y.L. Forum at 640, n. 33) are appropriate.

As noted previously, Respondent was given access pursuant to the Freedom of Information Act to approximately 10,000 pages of material concerning the S.E.C.'s investigation of and trading suspensions in Canadian Javelin Ltd. An examination of this material, particularly with regard to requests by aggrieved parties for relief from the trading suspension orders demonstrates that the S.E.C. has acted in a most uneven-handed manner. More than 200 letters were received by the S.E.C. from persons protesting the trading suspensions. Many of these letters requested that the trading suspension be lifted and demanded a hearing. None of the requests for a hearing were granted. A number of letters asked to be provided with the reasons for the trading suspension. In response to these letters, the S.E.C. sent a copy of the press release announcing the initial trading suspension. Another common request was for information concerning how long the trading suspension would last. A typical response to this kind of letter is included as Appendix H to this brief.[48] (The name of the addressee of this letter is deleted in accordance with procedures adopted by the S.E.C. with regard to the dissemination of material under the Freedom

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48. The inclusion of the memoranda as appendices to this brief is not improper. When this case was before the court of appeals, Respondent requested that 337 pages of material obtained from the files of the S.E.C. pursuant to the Freedom of Information Act be included in the record (App. 148). The court of appeals took no action on this motion and consequently the material in question is not part of the formal record. However, this case is now before this Court and the question of whether this material should be included in the record may be reconsidered. Since all of the memoranda in question come directly from the files of the S.E.C., the S.E.C. is in a better position to determine their authenticity than Respondent and, therefore, cannot object to this procedure.

of Information Act.) It should be noted that this letter states that the S.E.C. "cannot predict when it will be lifted". Had the S.E.C. really suspended trading for a ten-day period as it claims, the answer to this question would be that the trading suspension expires in ten days or less. It is thus clear that the S.E.C. staff knew that the trading suspension was likely to last for longer than ten days. It is also interesting to note that this letter asserts that "important judicial remedies are available to investors." However, in the next sentence when it states that "recovery may be sought", it is obvious that the S.E.C. was contemplating a suit against the corporation which was the subject of the trading suspension order rather than a suit against the S.E.C. for wrongfully suspending trading.

Another type of letter can be found in Appendix I. This letter was from a broker-dealer that was experiencing capital problems because of the trading suspension. The broker in question owned 2,000 shares of Canadian Javelin Ltd. stock and wanted to sell these shares on the Montreal Stock Exchange, where Canadian Javelin Ltd. was actively traded in spite of the trading suspension by the S.E.C. Consequently, the broker in question sought a no-action letter. This request for a no-action letter was denied by the S.E.C. in a letter included as Appendix J. In marked contrast to this response is a memorandum included as Appendix K. This memorandum establishes that Stanley Sporkin has engaged in a criminal conspiracy to violate the Securities Exchange Act. The memorandum concerns a brokerage firm named Moses & Singer, which had a client who was holding shares of Canadian Javelin Ltd. in a restricted margin account while trading was suspended. (Moses & Singer, incidentally, is a New York City law firm, not a brokerage firm, and presumably had a brokerage firm for a client.) The memorandum states that

"after consulting with Stan Sporkin," Moses & Singer was advised that it could deliver the securities against payment to a broker in Canada for sale by that broker for the account of the customer. However, §12(k) as well as former §15(c)(5) of the Securities Exchange Act provide that "no broker or dealer shall make use of the mails or of means or instrumentality of interstate commerce to affect any transaction in, or induce the purchase or sale of, any security in which trading is so suspended." The letter included in Appendix K makes it clear that the broker was in the position of asking its customer to sell the stock in order to be able to pay off the margin account. Thus, the broker in question was inducing its customer to make a sale of a suspended security in clear violation of the Securities Exchange Act and Stanley Sporkin was conspiring with the broker to bring about this violation, which in turn is a criminal violation of 18 U.S.C. §5 (criminal conspiracy).

A final and particularly egregious example of the harm resulting from the uneven application of the S.E.C.'s trading suspension orders can be seen from a no-action letter published as *Canadian Javelin Ltd.*, S.E.C. Division of Market Regulation (December 16, 1975), CCH Fed. Sec. Law Rep. ¶80,417 [1975-1976 Transfer Binder], a copy of which is included as Appendix L. This request for a no-action letter makes a one-sided statement of the facts, but, without complicating matters too much, the essential facts are that the brokerage firm of Edward & Hanly sued Respondent as a result of a transaction in Canadian Javelin Ltd. Edward & Hanly obtained an *ex parte* order of attachment and attached 1,000 shares of Canadian Javelin Ltd. in its possession which had been delivered to it by Respondent. Edwards & Hanly sued Respondent and Respondent counter-claimed for $13,000, representing the value of the securities converted by Edwards & Hanly. After a trial on the merits, Edwards & Hanly prevailed on its main case, but Respondent prevail-

ed on his counter-claim for $13,000, the result being a judgement in favor of Respondent. On appeal, however, the appellate division reversed to the extent of dismissing the counter-claim. Edwards & Hanly then sought to sell the Canadian Javelin Ltd. shares in order to satisfy the judgment but was unable to do so because trading had been suspended. It then applied to the S.E.C. for a no-action letter permitting it to sell the 1000 Canadian Javelin Ltd. shares at a public auction at which it would then purchase these shares for resale on the Montreal Stock Exchange. The reason given by Edwards & Hanly for wanting to do this was that it had been informed that Respondent intended to appeal from the decision of the appellate court to the New York State Court of Appeals on the grounds of the unconstitutionality of the New York State Attachment Statute. Therefore, Edwards & Hanly wanted to sell the Canadian Javelin Ltd. shares prior to the termination of the trading suspension so as to moot any arguments Respondent might make to the court of appeals regarding the invalidity of the order of attachment. It so happened that at the time of this request for a no-action letter, the S.E.C. was also concerned about this particular 1,000 shares because Respondent was petitioning the court of appeals to lift the trading suspension, and in response to the S.E.C.'s argument in that court that the case was moot and that Respondent lacked standing to challenge the trading suspension orders, Respondent cited the circumstances pertaining to this 1,000 shares and the harm he was suffering as a result of the trading suspension. Thus, the S.E.C. had an interest in "mooting" the arguments raised by Respondent in the court of appeals. Therefore, the S.E.C. granted Edwards & Hanly a no-action letter in order to alleviate both of their problems with Respondent pertaining to this 1,000 shares. Shortly thereafter, Edwards & Hanly did in fact sell the Canadian Javelin Ltd. shares at a public auction and then re-purchased these

shares and sold them on the Montreal Stock Exchange, in clear violation of §12(k) of the Securities Exchange Act and, as promised, the S.E.C. took no action. From this it is apparent that the staff of the S.E.C. has improperly if not illegally given preferential treatment to the client of Moses & Singer and to Edwards & Hanly by granting them permission to violate §12(k). It is submitted that this and other improprieties committed by the S.E.C. clearly demonstrate the unconstitutionality of §12(k) of the Securities Exchange Act.

CONCLUSION

The decision of the court of appeals, insofar as it vacated all but the first trading suspension order and ordered the S.E.C. to discontinue its practice of issuing successive trading suspension orders, should be affirmed. The orders of the S.E.C. suspending trading in Canadian Javelin Ltd. should also be vacated on the grounds of the lack of substantial evidence in the record to support them. This Court should declare §12(k) of the Securities Exchange Act to be unconstitutional. This Court may, in its discretion, remand the administrative proceeding against Respondent to the S.E.C. for reconsideration in light of this decision.

Respectfully submitted,

Samuel H. Sloan

APPENDIX A

PERTINENT STATUTES AND RULES

ADMINISTRATIVE PROCEDURE ACT

§ 556(d). Except as otherwise provided by statute, the proponent of a rule or order has the burden of proof. Any oral or documentary evidence may be received, but the agency as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence. A sanction may not be imposed or rule or order issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable probative, and substantial evidence. A party is entitled to present his case or defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. In rule making or determining claims for money or benefits or applications for initial licenses an agency may, when a party will not be prejudiced thereby, adopt procedures for the submission of all or part of the evidence in written form.

Act of September 6, 1966, Pub. L. 89-554, 80 Stat. 386, 5 U.S.C. § 556(d).

§ 558(c). When application is made for a license required by law, the agency, with due regard for the rights and privileges of all the interested parties or adversely affected persons and

within a reasonable time, shall set and complete proceedings required to be conducted in accordance with sections 556 and 557 of this title or other proceedings required by law and shall make its decision. Except in cases of willfulness or those in which public health, interest, or safety requires otherwise, the withdrawal, suspension, revocation, or annulment of a license is lawful only if, before the institution of agency proceedings therefor, the licensee has been given—

(1) notice by the agency in writing of the facts or conduct which may warrant the action; and

(2) the opportunity to demonstrate or achieve compliance with all lawful requirements.

When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency.

Act of September 6, 1966, Pub. L. 89-554, 80 Stat. 388, 5 U.S.C. §558(c).

SECURITIES EXCHANGE ACT OF 1934

§12(j). The Commission is authorized, by order, as it deems necessary or appropriate for the protection of investors to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the

registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this title or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

Act of June 4, 1975, Pub. L. 94-29, 89 Stat. 118, 15 U.S.C. §78 *l* (j).

§12(k). If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

Act of June 4, 1975, Pub. L. 94-29, 89 Stat. 118, 15 U.S.C. §78 *l* (k).

§15(c)(2). No broker or dealer shall make use of the mails of or any means or instrumentality

of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any security (other than an exempted security or commercial paper, bankers' acceptances, or commercial bills) otherwise than on a national securities exchange of which it is a member, in connection with which such broker or dealer engages in any fraudulent, deceptive, or manipulative act or practice, or makes any fictitious quotation, and no municipal securities dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce or attempt to induce the purchase or sale of, any municipal security in connection with which such municipal securities dealer engages in any fraudulent, deceptive or manipulative act or practice or makes any fictitious quotation. The Commission shall, for the purposes of this paragraph, by rules and regulations define, and prescribe means reasonably designed to prevent, such acts and practices as are fraudulent, deceptive, or manipulative and such quotations as are fictitious.

Act of June 6, 1934, 48 Stat. 895; May 23, 1936, 49 Stat. 1377; June 25, 1938, 52 Stat. 1075; August 20, 1964, Pub. L. 88-467, 78 Stat. 570; December 30, 1970, Pub. L. 91-593, 84 Stat. 1653; June 4, 1975, Pub. L. 94-29, 89 Stat. 121, 15 U.S.C. § 78 *o*(c)(2).

§ 25(a)(1). A person aggrieved by a final order of the Commission entered pursuant to this title may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order,

a written petition praying that the order be modified or set aside in whole or in part.

(2) A copy of the petition shall be transmitted forthwith by the clerk of the court to a member of the Commission or an officer designated by the Commission for that purpose. Thereupon, the Commission shall file in the court the record on which the order complained of is entered, as provided in section 2112 of title 28, United States Code, and the Federal Rules of Appellate Procedure.

(3) On the filing of the petition, the court has jurisdiction, which becomes exclusive on the filing of the record, to affirm or modify and enforce or to set aside the order in whole or in part.

(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

Act of June 6, 1934, 48 Stat. 901; August 28, 1958, Pub. L. 85-791, 72 Stat. 945; June 4, 1975, Pub. L. 94-29, 89 Stat. 158, 15 U.S.C. §78 *y*(a).

§25(c)(2). The filing of a petition under this section does not operate as a stay of the Commission's order or rule. Until the court's jurisdiction becomes exclusive, the Commission may stay its order or rule pending judicial review if it finds that justice so requires. After the filing of a petition under this section, the court, on whatever conditions may be required and to the extent necessary to prevent irreparable injury, may issue all necessary and appropriate process to stay the order or rule or to preserve status or rights pending its review; but (notwithstanding section 705 of title 5, United States Code) no such process may be issued by the court before the filing of the record or the materials set forth in subsection (b)(2) of this section unless: (A) the Commission has denied a stay or failed to grant requested relief, (B) a reasonable period has expired since the filing of an application for a stay without a decision by the Commission, or (C) there was reasonable ground for failure to apply to the Commission.

Act of June 4, 1975, Pub. L. 94-29, 89 Stat. 158, 15 U.S.C. §78 *y*(c)(2).

§32(a). Any person who willfully violates any provision of this title, or any rule or regulation thereunder the violation of which is made unlawful or the observance of which is required under the terms of this title, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document

required to be filed under this title, or any person who willfully and knowingly makes, or causes to be made, any statement in any application, report, or document required to be filed under this title or any rule or regulation thereunder or any undertaking contained in a registration statement as provided in subsection (d) of section 15 of this title, which statement was false or misleading with respect to any material fact, shall upon conviction be fined not more than $10,000, or imprisoned not more than two years, or both, except that when such person is an exchange, a fine not exceeding $500,000 may be imposed; but no person shall be subject to imprisonment under this section for the violation of any rule or regulation if he proves that he had no knowledge of such rule or regulation.

Act of June 6, 1934, 48 Stat. 904; May 27, 1936, 49 Stat. 1380; June 25, 1938, 52 Stat. 1076; August 20, 1964, Pub. L. 88-467, 78 Stat. 580; June 4, 1975, Pub. L. 94-29, 89 Stat 162, 163, 15 U.S.C. §78 *ff*.

(b) Any issuer which fails to file information, documents, or reports required to be filed under subsection (d) of section 15 of this title or any rule or regulation thereunder shall forfeit to the United States the sum of $100 for each and every day such failure to file shall continue. Such forfeiture, which shall be in lieu of any criminal penalty for such failure to file which might be deemed to arise under subsection (a) of this section, shall be payable to the Treasury of the United States and shall be recoverable in a civil suit in the name of the United States.

Former §15(c)(5). If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading otherwise than on a national securities exchange, in any security (other than an exempted security) for a period not exceeding ten days. No broker or dealer shall make use of the mails or of any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

Act of August 20, 1964, Pub. L. 88-467, 78 Stat. 574, 15 U.S.C. §78 *o*(b).

Former §19(a). The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors—

* * * * * *

(4) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days.

Act of June 6, 1934, 48 Stat. 898, 15 U.S.C. §78s(a).

ALL WRITS ACT

§1651(a). The Supreme Court of the United States and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

Act of June 25, 1948, 62 Stat. 944; May 24, 1949, 63 Stat. 102, 28 U.S.C. §1651(a).

DECLARATORY JUDGMENT ACT

§2201. In a case of actual controversy within its jurisdiction, except with respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue Code of 1954, any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of final judgment or decree and shall be reviewable as such.

Act of June 25, 1948, 62 Stat. 964; May 24, 1949, 63 Stat. 105; August 28, 1954, 68 Stat. 890; July 7, 1958, Pub. L. 85-508, 72 Stat. 349; October 4, 1976, Pub. L. 94-455, Title XIII, §1306(b)(8), 90 Stat. 1719, 28 U.S.C. §2201.

FEDERAL RULES OF APPELLATE PROCEDURE

Rule 17(a). **Agency to File; Time for Filing; Notice of Filing.** The agency shall file the record with the clerk of the court of appeals within 40 days after service upon it of the petition for review unless a different time is provided by the statute authorizing review. In enforcement proceedings the agency shall file the record within 40 days after filing an application for enforcement, but the record need not be filed unless the respondent has

filed an answer contesting enforcement of the order, or unless the court otherwise orders. The court may shorten or extend the time above prescribed. The clerk shall give notice to all parties of the date on which the record is filed.

RULES OF THE SECURITIES EXCHANGE COMMISSION

Rule 15c2-11. **Initiation or resumption of quotations without specified information.** (a) It shall be a fraudulent, manipulative, and deceptive practice within the meaning of section 15(c)(2) of the Act, for a broker or dealer to publish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this section) unless:

(1) The issuer has filed a registration statement under the Securities Act of 1933 which became effective less than 90 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium: *Provided*, That such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of the prospectus specified by section 10(a) of the Securities Act of 1933; or

(2) The issuer has filed a notification under Regulation A under the Securities Act of 1933 which became effective less than 40 calendar days prior to the day on which such broker or dealer publishes or submits the quotation to the quotation medium: *Provided*, That the offering circular provided for under Regulation A has not thereafter

become the subject of a suspension order which is still in effect when the quotation is published or submitted, and such broker or dealer has in his records a copy of such offering circular; or

(3) (i) The issuer is required to file reports pursuant to section 13 or 15(d) of the Act, or is the issuer of a security covered by section 12(g)(2) (B) or (G) of the Act, and

(ii) The broker or dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed at regular intervals pursuant to section 13 or 15(d) of the Act, or, in the case of insurance companies exempted from section 12(g) of the Act by section 12(g)(2) (G) thereof, the annual statement referred to in section 12(g)(2) (G) (i) of the Act; and

(iii) The broker or dealer has in his records the issuer's most recent annual report filed pursuant to section 13 or 15(d) of the Act, or the annual statement in the case of an insurance company not subject to section 12(g) of the Act, together with any other reports required to be filed at regular intervals under such provisions of the Act which have been filed by the issuer after such annual report or annual statement; or

(4) Such broker or dealer has in his records, and shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker or dealer, the following information (which shall be reasonably current in relation to the day the quotation is submitted), which he has no reasonable basis for believing is not true and correct or reasonably current, and which was obtained by him from sources which he has a reasonable basis for believing are reliable: (i) The

exact name of the issuer and its predecessor (if any); (ii) the address of its principal executive offices; (iii) the state of incorporation, if it is a corporation; (iv) the exact title and class of the security; (v) the par or stated value of the security; (vi) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year; (vii) the name and address of the transfer agent; (viii) the nature of the issuer's business; (ix) the nature of products or services offered; (x) the nature and extent of the issuer's facilities; (xi) the name of the chief executive officer and members of the board of directors; (xii) the issuer's most recent balance sheet and profit and loss and retained earnings statements; (xiii) similar financial information for such part of the 2 preceding fiscal years as the issuer or its predecessor has been in existence; (xiv) whether the broker or dealer or any associated person is affiliated, directly or indirectly with the issuer; (xv) whether the quotation is being published or submitted on behalf of any other broker or dealer, and, if so, the name of such broker or dealer; and (xvi) whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than 10 percent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under the federal securities laws for any sales of such securities on behalf of such person. If such information is made available to others upon request pursuant to this subparagraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker or

dealer that such information is true and correct, but shall constitute a representation by such broker or dealer that the information is reasonably current in relation to the day the quotation is submitted, that he has no reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which he has a reasonable basis for believing are reliable.

(b) With respect to any security the quotation of which is within the provisions of this section, the broker or dealer submitting or publishing such quotation shall maintain in his records information regarding all circumstances involved in the submission or publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transaction provided to the broker or dealer by such person or persons.

(c) The broker or dealer shall maintain in writing as part of his records the information described in paragraphs (a) and (b) of this section, and any other information (including adverse information) regarding the issuer which comes to his knowledge or possession before the publication of submission of the quotation, and preserve such records for the periods specified in Sec. 240.17a-4.

(d) For any security of an issuer included in paragraph (a)(4) of this section, the broker or dealer submitting the quotation shall furnish to the inter-dealer quotation system (as defined in paragraph (e)(1) of this section), in such form as such system shall prescribe, at least 2 days before the quotation is published or submitted, the information regarding the security and the issuer which such broker or dealer is required to maintain

pursuant to said paragraph (a)(4) of this section.

(e) For purposes of this section:

(1) "Quotation medium" shall mean any "interdealer quotation system" or any publication or electronic communications network or other device which is used by brokers or dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(2) "Interdealer quotation system" shall mean any system of general circulation to brokers or dealers which regularly disseminates quotations of identified brokers or dealers.

(3) Except as otherwise specified in this section, "quotation" shall mean any bid or offer at a specified price with respect to a security.

(f) The provisions of this section shall not apply to:

(1) The publication or submission of a quotation respecting a security admitted to trading on a national securities exchange and which is traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted.

(2) The publication or submission of a quotation for securities of foreign issuers exempt from section 12(g) of the Act by reason of compliance with the provisions of Sec. 240.12g3-2(b).

(3) The publication or submission of a quotation respecting a security which has been the subject of both bid and ask quotations in an interdealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days, with no more than 4 business days in succession without such a two-way quotation.

(4) The publication or submission of a quotation respecting a municipal security.

(4)(T) The publication or submission of a quotation respecting a security which, at least once each fifth business day, has been the subject of both bid and ask quotations at specified prices reported to, and published by, an interdealer quotation system—

(i) Which has reported to the broker or dealer who wishes to submit such a quotation that records of the system reflect that at least one registered broker or dealer has made, or

(ii) To which a registered broker or dealer who wishes to submit such a quotation has reported or represented that he has made both bid and ask quotations at specified prices on each of at least 12 business days within the previous 30 calendar days, with no more than 4 business days in succession without a reflection of the existence of such a two-way quotation.

This temporary subsection shall expire on April 30, 1977.

(g) The requirement in paragraph (a) (4) of this section that the information with respect to the issuer be "reasonably current" will be presumed to be satisfied, unless the broker or dealer has information to the contrary, if:

(1) The balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by additional statements of

profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the publication of submission of the quotation.

(2) Other information regarding the issuer specified in paragraph (a)(4) of this section is as of a date within 12 months prior to the publication or submission of the quotation.

(h) This section shall not prohibit any publication or submission of any quotation if the Commission, upon written request or upon its own motion, exempts such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this section.

38 Fed. Reg. 18641, September 18, 1971, as amended at 41 Fed. Reg. 22826, June 7, 1976; 42 Fed. Reg. 13110, March 9, 1977, 17 C.F.R. §240.15c2-11.

APPENDIX B

LETTER FROM RESPONDENT TO S.E.C. DATED OCTOBER 21, 1975

Samuel H. Sloan
917 Old Trents Ferry Rd.
Lynchburg, Va. 24503

October 21, 1975

George A. Fitzsimmons
Secretary
Securities & Exchange Commission
500 N. Capitol Street
Washington, D.C. 20549

Re: Canadian Javelin Ltd.

Dear Sir:

I hereby demand that the Securities & Exchange Commission conduct an administrative hearing forthwith regarding the validity of the suspensions of trading in Canadian Javelin Ltd. I shall appear personally or through counsel at such a hearing. I assume that at the time of this hearing the S.E.C. will be prepared to go forward with proof showing that the suspensions of trading in question are justified. I wish to make it clear that I am challenging the validity of all suspensions of trading in Canadian Javelin Ltd. including those which may be in effect at the time of the administrative hearing or at the time the S.E.C. renders its decision.

In making this demand I am assuming that you are aware of the Per Curiam opinion of the United States Court of Appeals for the Second Circuit dated October 15, 1975

in *Sloan v. S.E.C.* 74-2457. The pertinant part of this opinion is as follows:

> "[T]he S.E.C. on this appeal has indicated that it is willing in fact to grant Sloan some sort of administrative hearing, thus satisfying any possible exhaustion requirement while also contributing to the record we now find insurmountably sparce.
>
> We therefore dismiss Sloan's appeal but without prejudice to his repleading after an administrative hearing before the S.E.C., from which judicial review may be sought."

Footnote 4 of the same opinion indicates that I should be given the opportunity to urge my objections before the S.E.C. For a statement of my objections I refer the S.E.C. to the two briefs I filed in this matter in the Court of Appeals. I do not believe it should be necessary for me to refile these identical briefs with the S.E.C. since the S.E.C. has already been served with an adequate number of copies and my arguments have not changed. However, I refer you to several court decisions which I believe provide further support for the arguments advanced in my briefs. These decisions are: *Schechter Poultry Corp. v. United States* 295 U.S. 495 (1935); *Panama Refining Co. v. Ryan* 293 U.S. 388 (1935); *Railroad Retirement Board v. Alton R.R.* 295 U.S. 330 (1935); *Standard Airlines v. CAB* 177 F. 2d 18 (2d Cir. 1949) and *National Cable Television v. United States* 415 U.S. 336 (1974).

Please advise me as to the date for this forthcoming hearing. I believe that the hearing should be held within the next one or two weeks since it is clear that the Court of Appeals considers further suspensions of trading to be of questionable validity unless a hearing has been conducted. Certainly, the S.E.C. should refrain from making any further orders of suspension of trading unless or until there

has been a hearing. If the S.E.C. does not do so or if the S.E.C. indicates that a hearing may not be forthcoming in the reasonably near future, I shall be constrained to proceed accordingly.

Very truly yours,

Samuel H. Sloan

cc:
Diamond & Golomb
Counsel for Canadian Javelin Ltd.
99 Park Avenue
New York, N.Y.

United States Court of Appeals
for the Second Circuit
U.S. Courthouse
Foley Square
New York, New York

APPENDIX C

RESPONSE OF THE S.E.C. DATED NOVEMBER 7, 1975

Mr. Samuel H. Sloan
917 Old Trents Ferry Road
Lynchburg, Virginia 24503

Dear Mr. Sloan:

The Commission is in receipt of your letter dated October 21, 1975 in which you demand that an administrative hearing be held forthwith regarding the validity of the suspensions of trading in the securities of Canadian Javelin, Ltd.

Consistent with the *per curiam* opinion of the Court of Appeals in *Samual H. Sloan v. Securities and Exchange Commission*, 74-2457, you are invited to submit an appropriate application in support of your opposition to suspensions of trading in the common stock of Canadian Javelin. Your application should set forth in detail the factual matters you would offer to prove and your legal arguments in support of your position that the Commission is abusing its discretion by suspending trading in Canadian Javelin. Only in this way can a factual record be developed so that, in the event of further suspensions, a Court of Appeals could later determine whether those suspensions were an abuse of discretion. In your letter you refer us, for a statement of your objection to these suspensions, "to the two briefs I filed in this matter in the Court of Appeals." Those briefs are not suitable for this purpose and thus we invite you to file the type of petition set forth above.

Upon receipt of such a petition the Commission will determine whether the issues raised therein can be

determined upon your affidavits or other written submissions in support of your petition or whether the issues can only be resolved in the context of an evidentiary hearing.

If I can be of any further assistance to you, please do not hesitate to contact me.

Very truly yours,

George A. Fitzsimmons, Secretary

APPENDIX D

FORM 211

NATIONAL QUOTATION BUREAU

INCORPORATED

CHICAGO
SAN FRANCISCO

150 NASSAU STREET
NEW YORK, N. Y. 10038
212-349-5580

BOSTON
LOS ANGELES

No quotation will be published until the broker-dealer seeking to insert the quotation furnishes the information requested on Parts 1 and 2 below, and if necessary, the information in Part 3, and duly executes and delivers this form.

PART 1

A. Exact name of the issuer and predecessor (if any).

B. State of incorporation.

C. Address of principal executive offices.

D. Complete title and class of security to be quoted.

E. Par or stated value of security.

F. Name and address of any transfer agent.

G. Number of shares outstanding of the security as of the end of the issuer's most recent fiscal year.

H. Price at which security is to be initially quoted. Bid _____ Asked _____

PART 2

Check the item below which indicates the exemption from Rule 15c2-11 of the Securities Exchange Act of 1934 (the "34 Act") upon which you rely in submitting your quotation.

☐ A. The issuer has filed a registration statement under the Securities Act of 1933 (the "33 Act") which became effective less than 90 calendar days prior to the date hereof, and such registration statement has not been the subject of a stop order which is still in effect, and the undersigned has in its records a copy of the prospectus qualified by Section 10(a) of the 33 Act; or

☐ B. The issuer has filed a notification under Regulation A of the 33 Act which became effective less than 45 calendar days prior to the date hereof, and the offering circular provided for under Regulation A has not become the subject of a suspension order which is still in effect, and the undersigned has in his records a copy of such offering circular; or

☐ C. (i) The issuer is required to file reports pursuant to Section 13 or 15(d) of the 34 Act, or is an issuer of a security exempt by Section 12(g) (2) (B) or (G) of the 34 Act; and

(ii) the undersigned has a reasonable basis for believing the issuer is current in filing the reports required to be filed at regular intervals pursuant to Section 13 or 15(d) of the 34 Act, or, in the case of insurance companies, exempted from Section 13(a) of the 34 Act by subparagraph 12(g) (2) (G) thereof, the annual statement referred to in Section 12(g) (2) (G) (i) of the 34 Act; and

(iii) the undersigned has in his records the issuer's most recent annual report (an Form 10-K) filed pursuant to Section 13 or 15(d) of the 34 Act, or the annual statement of an insurance company not subject to Section 13(a) of the 34 Act, together with any other reports required to be filed at regular intervals under such provisions of the 34 Act which have been filed by the issuer after such annual report or annual statement; or

☐ D. The security of the issuer on which you are submitting a quotation has been the subject of both bid and asked quotations in an interdealer quotation system at specified prices on each of at least 12 days within the previous 30 calendar days with no more than four business days in succession without such a two-way quotation; or

(see page 23)

☐ E. The security of the issuer of which you are submitting a quotation is admitted to trading on a national securities exchange (as registered under the 34 Act) and has been traded on such an exchange on the same day as, or on the business day next preceding, the day the quotation is published or submitted; or

☐ F. The security of the issuer of which you are submitting a quotation is a security of a foreign issuer exempt from Section 12(g) of the 34 Act by reason of compliance with the provisions of Rule 12g3-2(b) thereunder.

☐ G. None of the above.

If you have checked A or B above, supply a copy of the prospectus or offering circular to National Quotation Bureau with this Form 211.

If your answer was "G. None of the above", please supply the information specified in Part 3.

PART 3

A. Describe the nature of products or services offered by the issuer.

B. Describe the nature and the extent of the issuer's facilities.

C. Indicate the name of the Chief Executive officer and members of the Board of Directors of the issuer.

D. Attach a copy of the issuer's most recent balance sheet and profit and loss retained earning statement.

E. Attach similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence.

F. State whether the undersigned, or any person associated with the undersigned, is affiliated directly or indirectly with the issuer.

G. State whether the quotation is being published or submitted on behalf of any other broker-dealer. If so, state the name of such broker or dealer.

H. State whether the quotation is being submitted or published directly or indirectly on behalf of the issuer or any director, officer or any person, directly or indirectly, the beneficial owner of more than 10% of the outstanding units or shares of any equity security of the issuer. If so, state the name of such person and the basis for any exemption under the Federal securities laws for any sales of such securities on behalf of such person.

I certify that I have examined this form and, to the best of my knowledge and belief, it is true, correct and complete. I authorize the Secretary, Quotation Bureau, Incorporated, to furnish a copy of this questionnaire and any or all of the information contained in this form to the Securities and Exchange Commission or any other regulatory agency.

Name of employee to contact regarding information contained herein _____ Phone _____

Name and Signature of Partner or Officer _____

Firm Name _____ Date _____

Address _____ Zip No. _____

(see page 24)

APPENDIX E

SECURITY POSITIONS OF SAMUEL H. SLOAN ON NOVEMBER 18, 1976

EQUITY

No. of Shares	Security	If ever suspended by the S.E.C., date the suspension commenced
439	A A A Enterprises	
450	A K Electric	
100	Aberle Industries	9/19/73
1200	Advance Metal Products Inc.	12/11/73
217	Airport Services Inc.	
1200	Airtronics International of Florida	9/28/73
1400	Albee Homes, Inc.	2/12/74
1807	Albro Industries Corp.	4/13/73
5	Allegeheny Airlines Inc.	
700	Allied Aero Industries	
430	Allied Management & Systems Corp.	9/28/73
1000	Amcourt Systems Inc.	10/31/74
8938	American Raceway, Inc.	6/2/71
46	Ancorp National Services	
850	Apollo Industries Inc. (Maine)	6/22/73 and 5/10/74
100	Apollo Industries Inc. (Utah)	
400	Applied Devices Corp.--new	2/3/72, 5/15/73 and 2/26/74
600	Applied Synthetics Corp.	5/7/73
100	Associates International Inc.	1/30/74
300	Atek Industries Inc.	12/11/73
1	Athey Products Corp.	
1940	Atlas Credit Corp. Warrants	
60	Automated Reference Corp.	
100	Avien Inc.	11/13/74
200	Basic Sciences Inc.	
100	Beckley Industries	
500	Bio-Pure Inc.	
4	Burlington Development & Const. Co.	
200	CM Industries Inc.	
4000	Cadgie Taylor Co.	

13	Canadian Javelin Ltd.	3/13/71, 3/7/72, 11/29/73, 1/13/75 and 4/29/75
3210	Carolina Caribbean Corp.	11/13/74
7275	Carousel Fashions	
1000	Cavanagh Communities Corp.	
14	Central Railroad of New Jersey	
754	Clayco Petroleum Corp.	
1100	Celopatra Wig Creations	
600	Computer Applications Inc.	
1500	Computer Graphics Inc.	
100	Cracker Barrel Supermarkets, Inc.	
100	Cryo-Therm Inc. Units of Contingent Interest	
500	Custer Channel Wing Corp. Class B	4/26/73 and 2/28/74
100	D E I Industries Inc.	5/21/73
200	D S I Systems Series A Preferred	
3500	Daryl Industries Inc.	
200	Demetrios Inc.	
100	Dextra Corporation	1/27/72 and 4/11/74
9750	Dialog Computing Inc.	
400	Diapulse Corp. of America	8/3/73
3959	Document Systems Inc.	
490	Donut Kastle Inc.	
490	Donut Kastle Inc.	
600	Dorothy Perkins Cosmetics	
3	Drew National Corp. preferred	
1050	Electrospace Corp.	3/12/74
300	Environmental Services Inc.	8/3/73
3500	Equity National Industries Inc.	
250	Fisco Inc.	6/17/74
450	Four Seasons Equity Corp.	7/17/72
21995	Four Seasons Nursing Centers of America Inc.	5/13/70 and 7/17/72
68	Franklin National Bank	5/13/74, 5/15/74, 5/16/74 and 5/25/74
1035	Galaxy Group Inc.	
526	Gammas Process Co.	2/21/74
43	Gold Ribbon Foods	
136	Greatamerica Corp.	
100	Greater Continental Corp.	9/27/73
300	Gro-Plant Industries Inc.	
365	Grove Press Inc.	
500	Gulf Leasing Corp.	
5	Harver Educational Services	
6000	Hemisphere Hotels common	4/11/74
5500	Hemisphere Hotels warrants	4/11/74
5	Hollywood Color Labs	
16	Hugoton Gas Trust Units	

10250	Hydron Europe, Inc. subscription warrants	
300	Inland Systems Inc.	5/7/73
323	International banknote Co. preferred	
200	International Systems Associates, Ltd.	7/11/73
1815	Jama Productions	
40	The Laand Corporation (a/k/a Geolectrics Corp.)	
400	Laser Sciences Inc.	2/27/74
150	Leader International Industries	8/13/74
400	Lilac Time Inc.	1/5/73
100	Living & Learning Centers	
600	Lyntex Corp.	7/26/73
25	Macrose Industries Corp.	
150	Management Computer Systems Corp. warrants	
17	Manhattan Continental Development Corp.	4/22/76
28	Maxson Electronics Corp. warrants	
150	Mega Systems Inc. (Formerly Data Network Corp.)	4/11/73
200	Multitech Inc.	7/6/73
550	Multivox Corporation of America	
38	N M S Industries	
1475	National Tape Corp.	8/31/71
400	Old Town Corp.	5/22/73
2010	Operation Match Inc.	
600	Pan American Industries	
400	Photon Inc.	3/26/73
100	Pickwick Organization Inc.	5/15/73
1	Playboy Enterprises	
50	Professional Data Services Inc.	
200	R A I Inc.	
6	R E D M Corp.	
750	Republic Color Inc.	
200	Rocky Mountain Industries Inc.	
1939	Sabre Inc.	
1150	Sav-On Inc.	5/23/73
100	Sawyer-Adecor International Inc.	4/11/74
600	Saxony Industries Inc.	
5075	Scienscope Inc.	
400	Scientific Control Corp.	6/28/73
300	The Seaboard Corp.	10/18/73
1048	Seaferro Inc.	6/13/73
$220	Sherwood Diversified Services—new	
1725	Sherwood Diversified Services—old	
200	Space Plastics Inc.	
10602	Speedata, Inc.	
200	Stanwick Corp.	
$25	Stenocomp Inc.	
$850	Stirling Homex Corp. common	11/21/72

50400	Stirling Homex Corp. preferred	11/21/72
20000	Storybook Village, Inc.	
25	Structural Plastics Corp.	
4075	Syntonic Technology (Control Data) warrants	
200	Tele-Broadcasters Inc.	
200	Telescript C S P, Inc.	
100	Texas International Speedway common	
2000	Thermatrol of New York, Inc.	
160	1325 Union Corp.	
350	Toledo National Insurance Co. Class B	
200	Topper Corp.	2/9/72
38000	Trans World Airlines warrants	
100	Triex International Inc.	12/15/72
50	U. N. Industries	
43	United Reserve Underwriters	
63	United States Crown Corp.	4/11/74
800	Vendotronics Corp.	
100	Venture Concepts Inc.	
16398	Viatron Computer systems Corp.	
200	Vista Petroleum Corp.	
200	Webcor Inc.	
300	Wentworth Manufacturing Company	
255	Wilson & Co. warrants	
2962	Wilson Sporting Goods 10-15-78 warrants	
12	Wing Aircraft Co.	
100	Witt Tax Centers Inc.	
2900	World Wide Realty & Investing Corp.	4/5/73

SHORT POSITIONS

200	Resorts International Corp. Class B	

DEBT

$8000	Administrative Systems (cv. deb.) 8% of 1983	4/26/73
$100	Belock Instrument Corp. 6% of 1975	6/22/65
$1000	Esgro, Inc. (cv. deb.) 6% of 1988	
$101000	Paul Hardeman, Inc. (cv. deb.) 5-1/2% of 1978	
$800	Michigan International Speedway 8% of 1978	
$19000	T M A Co. (cv. deb.) 6-1/2% of 1982	6/12/73
$56000	Texas International Speedway (cv. deb.) 8% of 1984	
$3000	Viatron Computer (cv. deb.) 6-1/4% of 1989	

APPENDIX F

LETTER FROM SAMUEL H. SLOAN TO S.E.C. STAFF ATTORNEY DATED JULY 22, 1973 AND ENCLOSURES

July 22, 1973

Larry Grimes
S.E.C.
Washington, D.C.

Dear Mr. Grimes,

Enclosed is a clipping from the Montreal Gazette of June 21, 1973, and the original UPI news release dated June 20, 1973. The American Stock Exchange halted trading immediately upon publication of this article, apparently at the request of the company. To the best of my knowledge it was not reprinted anywhere in the U.S. The company has never released a statement clarifying the differences between this news article and statements previously issued by Canadian Javelin. I have gone to great lengths to determine the accuracy of this and a great many other news articles concerning Javelin. The American Stock Exchange has not been particularly helpful. They have spoken to me on the telephone, but they refused to reply in writing to the two letters I wrote them concerning Javelin, a copy of one which is enclosed.

Recently there was a news article published in the Wall Street Journal (July 6, 1973), which stated that Bison Petroleum and Minerals had acquired a 200,000 acre mineral concession from the Government of Panama. This statement was untrue. Apparently Bison did purchase an existing mineral concession from Pavonia, S.A. another subsidiary of Javelin. The terms of the purchase and the

price paid have not been disclosed.

As a shareholder of Canadian Javelin I am concerned by the numerous conflicting statements concerning Canadian Javelin and the fact that I am unable to obtain a resolution to these conflicts. I remember in the not so distant past, Javelin claimed to own the timber rights to 300,000,000 acres of forest land in Newfoundland. This claim turned out to be based on fictitious documents provided by an undisclosed Lichtenstein corporation. I would appreciate any help you could provide in resolving these conflicts.

Very truly yours,

SHS/aq

Javelin copper deal delayed by Panama

PANAMA CITY — (UPI) — Panama has postponed for at least two months, while it draws up a new mining code, talks with Canadian Javelin Ltd. for a major copper mining concession, Commerce and Industries Minister Fernando Manfredo said yesterday.

The minister also reported the government is renegotiating a petroleum concession granted last month to Texaco and indicated it might break off talks with a Japanese consortium headed by Mitsui for another copper-mining deal.

Manfredo made his remarks at a luncheon of the Foreign Correspondents Club of Panama.

A draft proposal submitted by Canadian Javelin last May 7 to develop the rich Cerro Colorado copper deposit, considered by some geologists as the world's biggest, was shelved and the company was told it would have to await the approval of a new code before negotiations could resume, Manfredo said.

"We should have this new code within two months," the minister said.

TWO FEATURES

He said two new features of the draft now being considered by Panama's legislative commission call for a government representative on the board of directors of foreign mining companies operating in Panama and periodic revision of certain terms of their concessions.

"Whatever decision the board of that company takes can affect the country and therefore the country should be represented," Manfredo said.

"The presence of a government representative, who will have voice but no vote, also will mean that the government will be more aware of the company's operations by the country."

BEST COPY AVAILABLE

COPY SENT OVER UPI NEWSWIRE

Syllis Mr.
Repeating per your request Javelin 6-20
Night Ld
By J. Paul Hyatt

Panama City (UPI)—Panama has postponed for at least two months, while it draws up a new mining code talks with Canadian Javelin Ltd. for a major copper mining concession, commerce and industries Minister Fernando Manfredo said Wednesday.

The minister also reported the Government is renegotiating a petroleum concession granted last month to Texaco and indicated it might break off talks with a Japanese Consortium headed by Mitsui for another copper mining deal.

Manfredo made his remarks at a luncheon of the Foreign Correspondents Club of Panama.

A draft proposal submitted by Canadian Javelin last May 7 to develop the Rich Cerro Colorado Copper Deposit, considered by some Geologists as the worlds biggest, was shelved and the company was told it would have to await the approval of a new code before negotiations could resume, Manfredo said.

"He should have this new code within two months," the Minister estimated.

He said two new features of the draft now being considered by Panamas Legislative Commission call for a government representative on the Board of Directors of foreign mining companies operating in Panama and periodic revision of certain terms of their concessions.

"Whatever decision the board of that company takes can affect the country and therefore the country should be represented," Manfredo said.

"The presence of a government representative, who will have voice but no vote, also will mean that the

government will be more aware of the company's problems," he said. "It will not be an obstacle for the companys operations in the country."

Although Manfredo began his remarks on Cerro Colorado by saying, "We do not have sufficient information to support the claims of Canadian javelin that this is the biggest copper deposit in the world," later on he added, "I am convinced that there is a great deposit there."

The Minister denied that the Texaco exploration concession had been rejected. He said one clause dealing with arbitration that ran contrary to the tenets of the 1972 constitution on the subject "has objected to" by the legislative commission.

He also acknowledged that there had been some "Misinterpretations" of a clause giving Texaco an option to build a transisthmic pipeline for the exclusive purpose of pumping its own crude oil from the Atlantic, where the concession is, to the Pacific Ocean.

"Some members of the commission interpreted this to mean that the pipeline would be used for commercial ends, but this is clearly not authorized in the language of the clause," he said.

Negotiations with the Japanese consortium to mine copper at the Petrouilla area, which appeared near completion last month, are continuing, Manfredo said. He added, however, that the government "is now thinking about mining the copper reserves itself."

The minister said Panama has asked for the opinions of government mining specialists in Peru, Chile, Mexico, Canada and South Africa on the draft of its new mining code.

April 19, 1973

Mr. Charles Stevens
American Stock Exchange
86 Trinity Place
New York, N.Y.

Dear Mr. Stevens:

It has come to my attention that Canadian Javelin Ltd. did not hold an annual meeting for the year 1972. This fact was confirmed to me by their attorneys Steptoe and Johnson. Their last annual meeting was held on June 22, 1971 based upon the proxy materials which are on file in your library. I have been a shareholder of record of this company for more than a year and I am extremely anxious to receive some sort of financial information and to attend their annual meeting regardless of where it is held. I understand that this failure to hold an annual meeting is both a violation of Canadian Corporation Laws and the rules of the American Stock Exchange. Could you please advise me in writing as to what steps you have taken to correct this problem.

I wrote the American Stock Exchange concerning this company on March 14, 1973. So far my letter has not been answered. Therefore I am sending you a copy of this letter by hand and ask that you give it your immediate attention. I note that Canadian Javelin has still not sent its annual report for 1972 to its shareholders.

Very truly yours,

BY HAND

APPENDIX G

LETTER FROM SAMUEL H. SLOAN TO S.E.C. STAFF ATTORNEY DATED AUGUST 10, 1973 AND ENCLOSURES

Received Aug. 14, 1973
Division of Enforcement

Larry Grimes
Securities and Exchange Commission
Washington, D.C.

Dear Mr. Grimes,

The purpose of this letter is to make a formal complaint concerning trading activity in Canadian Javelin Ltd. ("CJV), and to request that the Commission suspend trading in this security. I also request that the Commission investigate and conduct hearings concerning its trading activity. The reasons for this request are as follows:

1. On June 20, 1973 the Government of Panama through its Minister of Commerce and Industry, Fernando Manfredo made a formal announcement to members of the press that it was terminating its negotiations with Canadian Javelin Ltd. I spoke to the Director of Mineral Resources of Panama in person on July 27, 1973 and by telephone on Aug. 8, 1973, and he advised me that this situation has not changed. This fact has not been disclosed to the public nor is it generally known.

2. Canadian Javelin has issued a statement that "The government of Panama has in no way suggested that the burden on Canadian Javelin Ltd." under a proposed new mining code would be heavier than under present regulations. This carefully worded statement avoids, but does not dispute the statement by Fernando Manfredo and tries to create a false impression that nothing has changed

with respect to the situation in Panama.

3. Due to the political situation in Panama particularly with respect to the Panama canal it seems unlikely that negotiations will resume in the near future. Panama on one well publicized occasion threatened to attack the Canal Zone.

4. It appears that the approximately $14,000,000 Canadian Javelin claims to have spent on the Panamanian drilling operation as stated in their balance sheet will have to be written off as a loss.

5. Canadian Javelin has widely circulated information that it has delineated an area of 2.2 billion tons of copper bearing minerals. I spoke to George Mickum, council for the company and asked him to tell me either what calculations were involved in producing this figure or what qualified geologist has made this computation. Mr. Mickum refused to answer me and questioned my motives in raising such an issue. I feel this is the routine sort of question that any securities analyst would ask. Mr. Mickum stated that the basis for these calculations has been reviewed and received the approval of the S.E.C. and if there were any questions concerning the basis for these calculations he was sure that the S.E.C. would suspend trading in CJV immediately. He also stated that representatives of the S.E.C. had visited the drilling sight, had received detailed information concerning the nature and extent of the drilling, and was satisfied that nothing irregular was taking place.

6. In spite of the assurances by Mr. Mickum that nothing was irregular there is a question in my mind as to whether his statements are accurate. I visited the drilling sight in Panama and neither the geologists employed there nor the geologists employed by the government of Panama to investigate and analyze the results of the drilling had any idea where 2.2 billion ton figure came from. Furthermore the S.E.C. office of Mining Engineering has adivsed me

that they have no information to back up this figure and they dispute directly some of Mr. Mickum's statements.

7. I have received numerous telephone calls from stock brokers who have heard that CJV has an immense copper find in Panama and is about to release the news that they have obtained financing for the construction and development necessary for this project. I also received a call an individual who claimed the stock would go to between $100 and $500 a share. I believe that these kind of calls indicate that the public has been greatly misled concerning the nature of Javelins work in Panama.

8. On April 1, 1971 the Commission issued release No. 125 which placed a burden upon brokers to use due diligence before effecting transactions in this security. I believe that I have satisfied this requirement but that many brokers have generally ignored this release.

9. Due to the nature of the recent trading activity in Canadian Javelin many brokers are unable to consumate the transactions into which they have entered. As a result there is a substantial fail position in the street so much so that brokers have become unable to effect buy-ins. As a result it appears that a number of brokers will suffer a severe financial loss. It also appears that if the present situation is allowed to continue CJV will trade at a substantially higher price in the immediate future which will further aggrevate the loss of these brokers and will be detrimental to the protection of the public.

10. It is generally known and agreed the CJV has engaged in fraudulent and deceptive practices for more than 20 years and that the chairman of the company has been convicted and sentenced for ignoring the registration requirements of the 1933 and 1934 Acts. The situation in Panama is not dissimilar to the situation which has existed in the past in Newfoundland, Laberador, Julian Lake, and Lake Wabush in which the company made wild projections which never came to fruition. In light of the history of this

company it would seem reasonable to assume that the statements of the Government of Panama are accurate.

11. I note that even respectable financial reporting services have made misstatements concerning the financial condition of CJV. For example Standard & Poor's reports that CJV earned 3 cents last year whereas in reality it reported a substantial loss.

12. I have been informed by PICKANS MATHER & CO which is the managing agent for LAKE WABUSH property from which CJV receives all of its income, approximately $4.5 million per year, that due to problems CJV is having Pickans Mather does not make any money payments directly to CJV but rather uses the money to pay creditors, lawyers, and others to whom CJV owes money. For this reason I question the accounting methods which are used to calculate the income of CJV.

I enclose various correspondence and news releases to support the above statements.

Very Truly Yours,

C.C. Stephen Girard
American Stock Exchange

LETTERHEAD OF
CANADIAN JAVELIN LIMITED
Executive Offices — 1115 Sherbrooke St. West
Suite 2703, Montreal 110, Quebec

June 22, 1973

PRESS RELEASE
FOR RELEASE MONDAY A.M.

Mr. John C. Doyle, Chairman of the Executive Committee of Canadian Javelin Limited, in charge of the Company's Cerro Colorado copper deposit in Panama, stated today from Panama that Minister Fernando Manfredo's statement made it clear and confirmed that the Company has delineated one of the world's largest copper mines. He stated the Company is now moving from the exploration stage to that of construction. He also explained that the Company has been consulted and provided with drafts of the new Mineral Code under consideration, and further has been asked for its suggestions. Mineral Code under consideration, requested Mr. H. J. Price (former Superintendent of Anaconda's Chuquicamata mine in Chile, the world's largest existing copper mine) and now General Manager of Canadian Javelin's Cerro Colorado copper deposit, to act as consultant and to assist and advise the Government on the provisions of the new Code. In no way has the Government suggested that the burden on the Company would be heavier than that provided under the present exploration contract that assures the Company's rights to exploit the copper under the present Mineral Code.

It has been the policy of Canadian javelin to include Government representatives on the Board of Directors of the Company, as was done in the development of its Wabush iron ore mines. The company official stated that it

would be particularly appropriate in Panama where the Company has enjoyed a very good and co-operative relationship with the Government. Elements of importance, due to the size of the Cerro Colorado copper project in the Republic of Panama, are available labour, a potential increase in Panamanian export trade balances and the environmental aspect singular to the mine which is located near the summit of the central mountain range, equal distance from both oceans (30 miles from both the Atlantic and the Pacific). The mechanics of disposing of 62,000,000 tons of tailings per year with which it is planned to fill the pestilential swamp bordering the oceans and thereby improve local living conditions.

The Company executive pointed out that the mine power supply to be installed will be greater than the total present electrical generating capacity of Panama. He stated that the physical task to be accomplished may be compared to the Panama Canal in that in the first fifteen years of operation it is expected that the total material extracted in this open pit mine will be greater than the total yardage excavated in building the Panama Canal itself.

The Chairman stated that the size of the Cerro Colorado deposits their company engineers had calculated in early June, 1973, was approximately 2,271,000,000 tons, indicated by drilling. The Cerro Colorado ore body appears to be the world's largest copper deposit. This is based on the fact that the Chuquicamata copper mine in Chile, generally considered to have been the world's largest, had an original size, according to published records, of 2,000,000,000 tons. Many hundreds of million tons have been mined during its fifty-seven years of operation. The Company official stated that the Company has been advised by one of the world's foremost geological consulting firms, Watts, Griffis and McOuat Ltd., Toronto, Canada, that the potential reserves are expected to be in excess of 3,000,000,000 tons. These geologists, along with other

consultants, have been retained by Javelin to assist the Company staff in preparing the mining plan.

Mr. Doyle also revealed that the Company has now completed Hole 106 which, based on published records, is the longest continuous vertical intersection of copper mineralization in the history of mining. The test hole, when terminated four-fifths of a mile deep in the earth (approximately 4,400 feet) was still in good copper mineralization of commercial grade.

The Company official further stated that the Cerro Colorado copper deposits have attracted the attention of the world's foremost mining and fabricating companies. He said serious discussions have been held and are continuing between the Company's representatives and Noranda Mines Ltd., Placer Development Ltd., of Canada, De Beers Consolidated Mines Ltd., Anglo-American Ltd. of South Africa, who are the world's largest producers of diamond and gold and amongst the biggest producers of copper, Standard Oil of Indiana, British Hynoch Metals Ltd., a company jointly owned by British Insulated Callender's Cables Limited, the world's largest user of elemental copper, and Imperial Metal Industries Ltd., a subsidiary of Imperial Chemical Industries Ltd., Outokumpu Oy of Finland, Norddeutsche Raffinerie A.G., Germany's largest refiner and producer of copper, Pechiney of France, Rio Tinto Patino, Madrid and many others. These discussions, while not finalized, have resulted in assuring the company of long term sales of blister and copper concentrates that would be sufficient to sustain mining and processing at a rate of more than 100,000 tons per day.

He also pointed out that most of these companies have agreed with Javelin that the immense size of these deposits indicates a desirability of the establishing of a copper smelter in Panama. The establishment of this smelter in itself requires changes in Panamanian regulations governing mineral development.

Finally, Mr. John C. Doyle pointed out that a group of consultants working on the project led by Wright Engineers Ltd. of Vancouver, Canada, are sizing equipment, completing the pricing and determining all relevant economic and cost factors. This work is scheduled to be completed early in August of 1973 and the Company expects to be ready shortly thereafter with the financing and marketing completed to enable the establishment of a mining and milling installation which, when fully operative, would have a capacity of 176,000 tons per day. Recent bulk smapling of the minerals to be mined during the first fifteen years have been tested by Lakefield Research Laboratories, Lakefield, Ontario. These tests have assayed an average grade of .81% copper, with additional minor contents of gold, silver and molybdenum. These metals, with large scale mining, should add substantial dollar values to the copper production.

There is now at Cerro Colorado a technical staff of Panamanian and Canadian engineers, geologists, drillers, and approximately three hundred Panamanian construction and exploration employees.

July 23, 1973

Dow Jones & Co.
22 Cortlandt St.
New York, N.Y. 10007

Dear Sirs,

On July 5, 1973 you carried a news article on the Dow Jones News Service concerning Canadian Javelin Ltd. The information in this article was repreated in the Wall Street Journal on July 6, 1973. The information contained in this article was untrue. I spoke to the Minister of Commerce and Industry in Panama, Fernando Manfredo, on the telephone in Panama on July 5, 1973 to confirm the story contained in this article. He said that the statement was untrue and furthermore that under the present Panamanian mining code no outside company could engage in mining activities in Panama. I enclose a copy of a UPI news release, dated June 20, 1973 which confirms this fact.

After learning that the information contained on the broad tape was untrue I immediately contacted your New York and Montreal offices to express my concern. Their position was that the Dow Jones was essentially correct and they would not print a retraction or a clarification. This position was not justified by the facts. According to them Bison purchased the concession, not from Panama but from another subsidiary of Javelin. In fact they said, this was not a purchase at all but merely a transfer of an existing right.

They acknowledged that Javelin does not have the right to mine copper in Panama.

Since the publication of this untrue article, Javelin has become one of the most actively traded securities on the American Stock Exchange. You are no doubt aware of the damage caused to shareholders and purchasers of any

security which has been the subject of false and misleading press releases. You are further, no doubt aware of your responsibility as a reputable news agency to verify the accurancy of the stories you print. In addition you are doubtless aware of the incalculable damage which has been done to Javelin shareholders in the past as a result of false, misleading and deceptive news articles published by you in your news services. Javelin was suspended by the S.E.C. in 1971 and again in 1972, in the later case as a direct result of a feature article which you carried a few days before the suspension.

Because of your flagrant disregard for the rights of Javelin shareholders to receive accurate information concerning their company. I am considering taking legal action against your agency. Prior to so doing I would like to give you this opportunity to clarify your position with regard to the issues I have raised. I would appreciate your response as soon as possible.

[Letterhead of Canadian Javelin Ltd.]

August 3, 1973

I have duly received from Mr. Steven L. Gerard of the American Stock Exchange Inc. a copy of your letter to him of July 23rd and a copy of his reply thereto dated July 31st, 1973. I note that Mr. Gerard has sent you a copy of our Annual Report, recent press releases and reprints of recent newspaper articles.

It appears that you have received all the information available to shareholders of the Company generally. However, we have no record of your attendance at the Company's annual meeting held on May 9th, 1973. If there is any information furnished to shareholders or in press releases which you have not received, I shall be glad to make same available to you.

I have been advised that you arrived in the Republic of Panama on Friday morning July 27th last and that you visited Canadian Javelin's Cerro Colorado copper properties on July 28th. The Company will, therefore, hold you responsible for the authenticity of any information which you may see fit to disseminate.

Yours truly,

W.M. Wismer,
President

WMW/nc
cc Mr. Steven L. Gerard,
American Stock Exchange Inc.

Dow Jones Newswire Item

—CANADIAN JAVELIN UNIT SAYS IT ACQUIRED 200,000 ACRE MINERAL CONCESSION IN PANAMA - July 5, 1973

CANADIAN JAVELIN UNIT—PANAMA CONCESSION - July -5, 1973

Montl -DJ- Bison Petroleum & Minerals Ltd. 61 PC owned by Canadian Javelin Ltd. said it has acquired a 200 00-acre mineral concession from the government of Panama.

Bison said the concession is known to contain gold, silver and other metals.

The agreement carries the right to proceed further to another agreement for actual exploitation.

Canadian javelin said that with its wholly-owned subsidiaries and majority-owned Bison it holds 600,000 acres of mineral concessions in Panama.

Bison also said it negotiated an agreement in principle with A.I.S. resources Ltd. Montreal for participation by A.I.S. in financing of an exploration and development program on the mineral concession. Details will be announced after approval by regulatory authorities.

APPENDIX H

LETTER FROM S.E.C. TO UNIDENTIFIED INVESTOR
REGARDING TRADING SUSPENSION IN CANADIAN JAVELIN LTD.

June 5, 1972

Thank you for your letter of May 24, 1972, requesting information on the subject company.

Enclosed for your information are copies of Securities Exchange Act of 1934 Release Nos. 9111, 9125, and 9528 concerning the Commission's actions with respect to Canadian Javelin Ltd.

We would like to point out that the Commission considers very carefully many factors prior to suspending trading in any security. A suspension of trading is ordered only when it is deemed appropriate and in the interest and protection of the investors. The suspension of trading in the stock of Canadian javelin, Ltd., is still in effect and we cannot predict when it will be lifted. You may be assured that when the Commission deems it appropriate and in the public interest, the suspension will be lifted and trading will be resumed at which time a public release will be issued.

You ask what rights you may have in this matter. It should be noted that important judicial remedies are available to investors. However, recovery may be sought only through the assertion of claims by investors before an appropriate court which usually involves the services of an attorney.

Thank you for your interest in writing.

Sincerely yours,

Frank J. Donaty, Jr., Chief
Section of Complaint Processing
By: Ruby E. Johnson,
Complaint Processor

Enclosures

APPENDIX I

LETTER REQUESTING NO ACTION LETTER

October 10, 1974

Mr. Richard J. Morrisey
Room 392
Division of Market Regulation
Securities and Exchange Commission
500 North Capitol Street
Washington, D.C. 20549

Re: *Canadian Javelin, Ltd.*

Dear Mr. Morrisey:

In February and March of this year we corresponded with the Staff concerning the ownership by our client, Interstate Securities Corporation, of 2,000 shares of Canadian Javelin, Ltd. Trading in Canadian Javelin stock on the American Stock Exchange and in the OTC market was suspended on November 23, 1973 by order of the Commission. This suspension as you know is still in effect.

Interstate, a registered broker dealer, purchased the Canadian Javelin stock, for its own account as principal, early in November 1973, for its own account as principal, early in November 1973 at approximately $11 per share. The suspension causes the stock to be subject to a 100% haircut for purposes of Interstate's NYSE minimum capital computation.

Meanwhile, the stock is, and has been, actively traded on the Montreal Stock Exchange even though the price has steadily declined. This state of affairs works a hardship on our client and we question its necessity in light of the active interest in the stock in Canada by people who by now

presumably are aware that trading has been suspended in the U.S. On Interstate's behalf, we request that the Commission permit it to sell the 2,000 shares on the Montreal Exchange.

Thank you.

Sincerely,

MOORE AND VAN ALLEN

Robert W. King, Jr.

RWK, jr/kw

cc: Mr. Glen R. Shipway

APPENDIX J

LETTER DENYING REQUEST FOR A NO ACTION LETTER

November 5, 1974

Robert W. King, Jr., Esq.
Moore and Van Allen
Attorneys at Law
Johnston Building
Charlotte, North Carolina 28281

Dear Mr. King:

This is in response to your letter of October 10, 1974 in which you request permission for your client, Interstate Securities Corporation, a registered broker-dealer, to sell as principal 2,000 shares of the common stock of Canadian Javelin, Ltd. Trading in the common stock has been suspended by order of the Commission since November 29, 1973. Reference is also made to your correspondence with the staff in February and March of this year.

On July 17, 1974 final judgments of permanent injunction were entered against Canadian Javelin and others (*Sec. v. Canadian Javelin, et. al.* (S.D.N.Y.), SEC Litigation Release No. 6441, *SEC Docket*, July 30, 1974, 620-1), requiring, among other things, that Canadian Javelin file with the Commission reports, and amendments thereto, as required under the Securities Exchange Act of 1934 (the "Act"). We have been informed by Canadian Javelin that this information is expected to be filed with the Commission in the near future. At that time the necessity for the trading suspension will be reviewed by the staff and the Commission. In view of the foregoing, and the specific

prohibitions of Section 15(c)(5) of the Act, we are not in a position at this time to take further action on your request.

Sincerely yours,

Richard John Morrisey III
Attorney

RJM:mcv:11-4-74

cc: Lewis, Klein, Spirer, King, Morrisey, Digest Files, Records, Subject File, Atlanta Reg. Office

APPENDIX K

OFFICE MEMORANDUM
SECURITIES AND EXCHANGE COMMISSION

January 9, 1974

TO: Files
FROM: Sig Schoedel, Attorney, Division of Enforcement

SUBJECT: Canadian Javelin

Mr. Michaelson of the brokerage firm Moses & Singer, NYC raised the question on January 2nd, 1974 whether stock of Canadian Javelin, now suspended from trading, can be sold in Canada where a market for that stock still exists. Moses & Singer has a customer carrying stock of Canadian Javelin in a margin account which is restricted because its debit balance exceeds Regulation T's 50% loan value. The account also requires maintenance margin at this time.

After consulting with Stan Sporkin, I telephoned Mr. Michaelson and advised him of our staff's informal position which would permit Moses & Singer to deliver Canadian Javelin stock against payment to a Canadian broker provided that ohe sale order was initiated by the customer in Canada entirely on his own, and that Moses & Singer's participation in the transaction was confined to delivery against payment. I also advised Mr. Michaelson that his firm would have to abide by the withdrawal provisions of Reg.T which require that at least 70% of the payment received from the Canadian broker must be used to reduce the customer's debit balance in his margin account.

cc: Ken Spirer, Room 303

APPENDIX L

NO ACTION LETTER OF THE SECURITIES AND EXCHANGE COMMISSION, DIVISION OF MARKET REGULATION REGARDING THE SALE OF SHARES OF CANADIAN JAVELIN LTD. WHILE TRADING SUSPENSION IS IN EFFECT

Securities and Exchange Commission, Division of Market Regulation. December 16, 1975. (Available January 15, 1976). Correspondence in full text.

[SEC Staff Reply]

This is in response to your letter of September 24, 1975, and subsequent telephone conversations concerning a proposed sale of 1,000 shares of the common stock of Canadian Javelin, Ltd. ("Canadian Javelin") by your client. We understand the following facts to be pertinent:

Canadian Javelin is a Canadian company, many of whose shareholders are United States citizens. On November 29, 1973, the Commission suspended all trading in the United States in the securities of Canadian Javelin pursuant to Sections 15(c)(5) and 19(a)(4) of the Securities Exchange Act of 1934 (the "Act"). The trading suspension has been ordered by the Commission for additional ten day periods, most recently pursuant to Section 12(k) of the Act, as amended by the Securities Acts Amendments of 1975 (P.L. 94-29, June 4, 1975), and is still in effect. You state that Canadian Javelin common shares are still traded in Canada.

Your client, Edwards & Hanly, is a registered broker-dealer. Samuel H. Sloan & Co. ("Sloan"), a registered broker-dealer, purported to sell short 4,000 shares of Canadian Javelin common stock through Edwards &

Hanly. Edwards & Hanly was notified by the American Stock Exchange that Sloan's sales were allegedly improper, whereupon Edwards & Hanly bought in the 4,000 shares of Canadian Javelin common stock for Sloan's account. These transactions resulted in a debit balance in Sloan's account of $6,611.42.

Sloan thereafter delivered 1,000 Canadian Javelin shares to Edwards & Hanly, which attached the shares as security for Sloan's debit balance under an Order of Attachment issued by the New York Supreme Court, New York County. Since September, 1973, the Canadian Javelin shares have been held by the Sheriff of New York County. On May 27, 1975 the New York Supreme Court, Appellate Division, First Department, granted a judgment in the sum of $5,662.50 to Edwards & Hanley. Sloan has appealed from this decision.

Edwards & Hanly desires to sell the attached Canadian Javelin shares in Canada for the purpose of staisfying its judgment against Sloan. It is proposed that, pursuant to New York law, the Sheriff of New York County will conduct a public auction to sell the stock. Edwards & Hanly proposes to bid for the stock up to a limit approximating its current market price in Canada, and, if the firm is the successful bidder, it would immediately attempt to sell the shares in Canada. If another bidder purchased the shares at the auction, Edwards & Hanly would, as judgment creditor, receive the net proceeds of the sale.

Section 12(k) of the Act, as amended, authorizes the Commission summarily to suspend trading in any security for a ten day period and provides that no broker or dealer shall make use of the facilities of interstate commerce to effect any transaction in, or induce the sale or purchase of, any security in which trading is so suspended. In our opinion the proposed purchase and sale of Canadian Javelin shares would be transactions effected by a broker-dealer within the meaning of Section 12(k) of the Act.

Nonetheless, if Edwards & Hanly limits its activities to purchasing the Canadian Javelin shares at a sheriff's public auction and thereafter to selling such shares in Canada, or to receiving the net proceeds of the auction of such shares (in the event that the shares are purchased by another bidder), the staff will not recommend that the Commission take enforcement action under Section 12(k) of the Act. Edwards & Hanly must be acting in good faith at all times, and, along with the other parties to the proposed sale, have no connection with the activities announced by the Commission as the basis for suspending trading in Canadian Javelin securities. Finally, in deciding whether to engage in such conduct, Edwards & Hanly must consider all other relevant provisions of the federal securities law.

[*Letter of Inquiry*]

In accordance with our telephone conversation, we wish, on behalf of our client, Edwards & Hanly, to request a no-action letter from the staff of the Commission in connection with a proposed sale by our client of 1,000 shares of common stock of Canadian Javelin Ltd. in Canada. We are advised that trading in said stock is suspended in the United States.

The facts upon which we base our request for such a no-action letter are as follows:

On July 17, 1973, Samuel H. Sloan, d/b/a Samuel H. Sloan & Co. purported to sell, through Edwards & Hanly, 2000 shares of Canadian Javelin common stock. An additional 2,000 shares of Canadian Javelin were purported to be sold on July 25, 1973. As is well known to the Commission, Mr. Sloan was, at that time, engaged in the improper short-selling of Canadian Javelin stock through many brokerage firms.

Edwards & Hanly was notified by the American Stock Exchange of Mr. Sloan's improper activities and proceed-

ed to buy in the 4,000 shares of Canadian Javelin for Mr. Sloan's account and risk. The mandatory buy-in resulted in a debit balance in Mr. Sloan's account with Edwards & Hanly of $6,611.42.

The mandatory buy-in of Mr. Sloan's account was accomplished without notice to Mr. Sloan for reasons, again, known to the Commission. Following the buy-in, Mr. Sloan inexplicably delivered 1,000 shares of Canadian Javelin to Edwards & Hanly with the request that the delivery be against immediate payment. The cashier at Edwards & Hanly, not knowing about the buy-in the day before, accepted the stock. Thereafter, communications were had within Edwards & Hanly. The fact of the buy-in and the loss was established, and Edwards & Hanly determined to assert a lien on the 1,000 shares of Canadian Javelin as security for the loss it sustained.

Thereafter, Edwards & Hanly caused an Order of Attachment to be issued by the Supreme Court, New York County, for the purpose of attaching the 1,000 shares of Canadian Javelin stock as security for the debt. Since September, 1973, the 1,000 shares of Canadian Javelin in question have been held by the Sheriff of New York County under said Order of Attachment.

Following lengthy litigation between Edwards & Hanly and Mr. Sloan concerning Edwards & Hanly's claim and certain counterclaims asserted by Mr. Sloan, on May 27, 1975, the Appellate Division, First Department, entered an order granting Edwards & Hanly a judgment in the sum of $5,662.50. The decision of the Appellate Division is reported at 48 A.D. 2d 644, 368 N.Y.S. 2d 218 (First Department, 1975).

It should be noted that Mr. Sloan, simultaneously with pursuing litigation in the State Courts, pursued the same litigation in the Federal Courts. His complaint against Edwards & Hanly in that forum was dismissed by order of Judge Bonsal, see CCH 73-74 Transfer Binder, Paragraph

94,579 (S.D.N.Y. 1974).

Mr. Sloan has appealed the order of the Appellate Division to the New York State Court of Appeals and the order of Judge Bonsal to the United States Court of Appeals for the Second Circuit.

Since Edwards & Hanly now has a judgment in its favor, it wishes to execute upon the 1,000 shares of Canadian Javelin currently held by the Sheriff of New York County, and to sell the same to partially satisfy the judgment in question.

As is apparent from the foregoing recitation, Edwards & Hanly has been forced to become involved in expensive and protracted litigation with Mr. Sloan and, apparently, Mr. Sloan intends to continue the litigation with continuing expense and inconvenience. If, however, Edwards & Hanly is permitted to sell the shares of stock which have been attached and thereby to satisfy its judgment, many of the real and fictitious issues which Mr. Sloan proposes to raise in further litigation will be obviated. For example, Mr. Sloan wants to attack the Constitutionality of the New York Attachment Statute, which an execution and sale of the stock would render moot.

By reason of the foregoing, Edwards & Hanly believes that the sale of the stock in question at the present time is necessary to avoid continuing substantial expenditures of legal time and effort in litigating with Mr. Sloan, as well as to realize some recovery on the judgment in its favor, which has taken so long to obtain.

Should the staff of the Commission determine that it would take no action should Edwards & Hanly sell the stock, the Sheriff of New York County, under New York law, would conduct a public auction to sell the stock. Edwards & Hanly would bid for the stock up to a limit approximating its current price in Canada, and if Edwards & Hanly were the successful bidder, the stock would be transmitted to Canada for immediate sale. Of course,

should another party desire to compete in bidding for the stock, the ultimate proceeds would, nonetheless, be received by Edwards & Hanly as judgment creditor.

For the foregoing reasons, we respectfully request, on behalf of Edwards & Hanly, that the staff of the Commission issue a no-action letter so as to permit Edwards & Hanly to sell the stock in question and, hopefully, to terminate time-consuming and frivolous litigation with Mr. Sloan.

MOTION FILE
JAN 31 1978

Supreme Court, U. S.
FILED
JAN 31 1978
MICHAEL RODAK, JR., CLERK

No. 76-1607

IN THE

Supreme Court of the United States

OCTOBER TERM 1977

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

SAMUEL H. SLOAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF *AMICUS CURIAE* OF CANADIAN JAVELIN LIMITED

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GAIL I. EDWIN
Of Counsel

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Statutes and Regulations
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12. (a) It shall be unlawful for any member, broker or dealer to effect any transaction in any security (other than an exempted security) on a national securities exchange unless a registration is effective as to such security for such exchange in accordance with the provisions of this chapter and the rules and regulations thereunder.

Act of June 6, 1934, c. 404 § 12, 48 Stat. 892, 15 U.S.C. § 78*l*(a).

12. (b). A security may be registered on a national securities exchange by the issuer filing an application with the exchange (and filing with the Commission such duplicate originals thereof as the Commission may require), which application shall contain—

(1) Such information, in such detail, as to the issuer and any person directly or indirectly controlling or controlled by, or under direct or indirect common control with, the issuer, and any guarantor of the security as to principal or interest or both, as the Commission may be rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors, in respect of the following: . . . [Subparagraphs A through L omitted].

Act of June 6, 1934, c. 404 § 12, 48 Stat. 892, 15 U.S.C. § 78*l*(a); Aug. 20, 1964, Pub.L. 88-467, § 3, 78 Stat. 565-568, 15 U.S.C. § 78*l*(b).

12. (j) The Commission is authorized by order, as it deems necessary or appropriate for the protection of investors, to deny, to suspend the effective date of,

to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence.

Act of June 4, 1975, Pub.L. 94-29, § 9, 89 Stat. 118, 15 U.S.C. § 78*l*(j).

12. (k). If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange or otherwise, in securities other than exempted securities, for a period not exceeding ninety days. No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended.

Act of June 4, 1975, Pub.L. 94-29, § 9, 89 Stat. 118, 15 U.S.C. § 78*l*(k).

13. (a). Every issuer of a security registered pursuant to section 12 of this chapter shall file with the

Commission, in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security—

(1) such information and documents (and such copies thereof) as the Commission shall require to keep reasonably current the information and documents required to be included in or filed with an application or registration statement filed pursuant to section 12 of this chapter, except that the Commission may not require the filing of any material contract wholly executed before July 1, 1962.

(2) such annual reports (and such copies thereof), certified if required by the rules and regulations of the Commission by independent public accountants, and such quarterly reports (and such copies thereof) as the Commission may prescribe.

Every issuer of a security registered on a national securities exchange shall also file a duplicate original of such information, documents, and reports with the exchange.

Act of June 6, 1934, c. 404 § 13, 48 Stat. 894; Aug. 20, 1964, Pub.L. 88-467, § 4, 78 Stat. 569, 15 U.S.C. § 78m(a).

14. (a) It shall be unlawful for any person, by the use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, to solicit or permit the use of his name to solicit any proxy or consent or authorization in respect of any security

(other than an exempted security) registered pursuant to section 12 of this chapter.

Act of June 6, 1934, c. 404 § 14, 48 Stat. 895; Aug. 20, 1964, Pub.L. 88-467, § 5, 78 Stat. 569, 15 U.S.C. § 78n(a).

15. (b)(5) The Commission shall, after appropriate notice and opportunity for hearing, by order censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of any broker or dealer, if it finds that such censure, denial, suspension, or revocation is in the public interest and that such broker or dealer, whether prior or subsequent to becoming such, or any person associated with such broker or dealer, whether prior or subsequent to becoming so associated—

. . .

(D) has willfully violated any provision of the Securities Act of 1933, or of the Investment Advisers Act of 1940, or of the Investment Company Act of 1940, or of this chapter, or of any rule or regulation under any of such statutes.

(E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person of any provision of the Securities Act of 1933, or the Investment Advisers Act of 1940, or the Investment Company Act of 1940, or of this chapter, or of any rule or regulation under any of such statutes, or has failed reasonably to supervise, with a view to preventing violations of the provisions of such statutes, rules, and regulations, another person who commits such a violation, if such other person is subject to his supervision. . . .

Act of June 6, 1934, c. 404, § 15, 48 Stat. 895; May 27, 1936, c. 462, § 3, 49 Stat. 1377; Aug. 20, 1964, Pub.L. 88-467, § 6, 78 Stat. 570-574, 15 U.S.C. § 78*o*(b)(5). Since amended and recodified as section 15(b)(4), Act of June 4, 1975, Pub.L. 94-29, § 11, 89 Stat. 121, 15 U.S.C. § 78*o*(b)(5).

15. (b)(6) Pending final determination whether any registration under this subsection shall be denied, the Commission may by order postpone the effective date of such registration for a period not to exceed fifteen days, but if, after appropriate notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, the Commission shall so order. Pending final determination whether any such registration shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors. . . .

Act of June 6, 1934, c. 404, § 15, 48 Stat. 895; May 27, 1936, c. 462, § 3, 49 Stat. 1377; Aug. 20, 1964, Pub.L. 88-467, § 6, 78 Stat. 570-574, 15 U.S.C. § 78*o*(b)(5). Since amended, Act of June 4, 1975, Pub.L. 94-29, § 11, 89 Stat. 121, 15 U.S.C. § 78*o*(b)(6).

15. (d) Each issuer which has filed a registration statement containing an undertaking which is or becomes operative under this subsection as in effect prior to August 20, 1964, and each issuer which shall after such date file a registration statement which has become effective pursuant to the Securities Act of 1933, as amended, shall file with the Commission in accord-

ance with such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this chapter in respect of a security registered pursuant to section 12 of this chapter. The duty to file under this subsection shall be automatically suspended if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this chapter. The duty to file under this subsection shall also be automatically suspended as to any fiscal year, other than the fiscal year within which such registration statement became effective, if, at the beginning of such fiscal year, the securities of each class to which the registration statement relates are held of record by less than three hundred persons. For the purposes of this section, the term "class" shall be construed to include all securities of an issuer which are of substantially similar character and the holders of which enjoy substantially similar rights and privileges. Nothing in this subsection shall apply to securities issued by a foreign government or political subdivision thereof.

Act of June 6, 1934, c. 404, § 15, 48 Stat. 895; May 23, 1936, c. 462, § 3, 49 Stat. 1377; Aug. 20, 1964, Pub.L. 88-467, § 6, 78 Stat. 570-574, 15 U.S.C. § 78*o*(b).

16. (a) Every person who is directly or indirectly the beneficial owner of more than 10 per centum of any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this chapter, or who is a director or an officer of the issuer of such security, shall file, at the time of the registration of such security on a national securities

exchange or by the effective date of a registration statement filed pursuant to section 12(g) of this chapter, or within ten days after he becomes such beneficial owner, director, or officer, a statement with the Commission (and if such security is registered on a national securities exchange, also with the exchange) of the amount of all equity securities of such issuer of which he is the beneficial owner, and within ten days after the close of each calendar month thereafter, if there has been a change in such ownership during such month, shall file with the Commission (and if such security is registered on a national securities exchange, shall also file with the exchange), a statement indicating his ownership at the close of the calendar month and such changes in his ownership as have occurred during such calendar month.

Act of June 6, 1934, c. 404, § 16, 48 Stat. 896; Aug. 20, 1964, Pub.L. 88-467, § 8, 78 Stat. 579, 15 U.S.C. § 78p(a).

19. (a) The Commission is authorized, if in its opinion such action is necessary or appropriate for the protection of investors—

(1) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to withdraw the registration of a national securities exchange if the Commission finds that such exchange has violated any provision of this chapter or of the rules and regulations thereunder or has failed to enforce, so far as is within its power, compliance therewith by a member or by an issuer of a security registered thereon.

(2) After appropriate notice and opportunity for hearing, by order to deny, to suspend the effective date of, to suspend for a period not exceeding twelve

months or to withdraw, the registration of a security if the Commission finds that the issuer of such security has failed to comply with any provision of this chapter or of the rules and regulations thereunder.

(3) After appropriate notice and opportunity for hearing, by order to suspend for a period not exceeding twelve months or to expel from a national securities exchange any member of [*sic;* or] officer thereof whom [*sic*] the Commission finds has violated any provision of this chapter or of the rules and regulations thereunder, or has effected a transaction for any other person who, he has reason to believe, is violating in respect of such transaction any provision of this chapter or the rules and regulations thereunder.

(4) And if in its opinion the public interest so requires, summarily to suspend trading in any registered security on any national securities exchange for a period not exceeding ten days, or with the approval of the President, summarily to suspend all trading on any national securities exchange for a period not exceeding ninety days.

Act of June 6, 1934, c. 404, § 19, 48 Stat. 898, 15 U.S.C. § 78s(a). Subsequently recodified and amended, Act of June 4, 1975, Pub.L. 94-29, § 9, 89 Stat. 118, 15 U.S.C. § 78s(a).

21. (d). Whenever it shall appear to the Commission that any person is engaged or is about to engage in acts or practices constituting a violation of any provision of this chapter, the rules or regulations thereunder, the rules of a national securities exchange or registered securities association of which such person is a member or a person associated with a member,

the rules of a registered clearing agency in which such person is a participant, or the rules of the Municipal Securities Rulemaking Board, it may in its discretion bring an action in the proper district court of the United States, the United States District Court for the District of Columbia, or the United States courts of any territory or other place subject to the jurisdiction of the United States, to enjoin such acts or practices, and upon a proper showing a permanent or temporary injunction or restraining order shall be granted without bond. The Commission may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the Attorney General, who may, in his discretion, institute the necessary criminal proceedings under this chapter.

Formerly subsection (e). Act of June 6, 1934, c. 404, § 21, 48 Stat. 899; June 25, 1936, c. 804, 49 Stat. 1921. Amended and recodified as subsection (d), Act of June 4, 1975, Pub.L. 94-29, § 17, 89 Stat. 154, 15 U.S.C. § 78u(b).

25. (a)(1) A person aggrieved by a final order of the Commission entered pursuant to this chapter may obtain review of the order in the United States Court of Appeals for the circuit in which he resides or has his principal place of business, or for the District of Columbia Circuit, by filing in such court, within sixty days after the entry of the order, a written petition requesting that the order be modified or set aside in whole or in part.

. . .

(4) The findings of the Commission as to the facts, if supported by substantial evidence, are conclusive.

(5) If either party applies to the court for leave to adduce additional evidence and shows to the satisfaction of the court that the additional evidence is material and that there was reasonable ground for failure to adduce it before the Commission, the court may remand the case to the Commission for further proceedings, in whatever manner and on whatever conditions the court considers appropriate. If the case is remanded to the Commission, it shall file in the court a supplemental record containing any new evidence, any further or modified findings, and any new order.

Act of June 6, 1934, c. 404, § 25, 48 Stat. 901; June 7, 1934, c. 426, 48 Stat. 926; May 24, 1949, c. 139, § 127, 63 Stat. 107; June 4, 1975, Pub.L. 94-29, § 20, 89 Stat. 158, 15 U.S.C. § 78y(a).

Rule 12b-25. Extension of Time for Furnishing Information.

NOTE: The disclosures required in reports filed with the Commission are essential to the preservation of free, fair and informed securities markets. It is of critical importance that such reports be furnished within the time they are required to be filed under the Commission's rules. Only the most compelling and unexpected circumstances justify a delay in the filing of a report and the dissemination to the public of the factual information called for therein.

(a) If any required information, document or report . . . cannot, without unreasonable effort or expense be furnished within the time it is required to be filed, the registrant shall, as soon as possible, but no later than the last day of the specified period, file with the Commission, an application on Form 12b-25 for an extension of time of not more than 30 days furnishing the

information called for by all items of the Form. One additional extension of not more than 30 days also may be applied for in the same manner as the initial application.

17 CFR § 240.12b-25.

No. 76-1607

IN THE

Supreme Court of the United States

October Term 1977

SECURITIES AND EXCHANGE COMMISSION,

Petitioner,

v.

SAMUEL H. SLOAN,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MOTION FOR LEAVE TO FILE BRIEF *AMICUS CURIAE*

TO THE HONORABLE JUSTICES OF THE UNITED STATES SUPREME COURT:

Canadian Javelin Limited ("Javelin") respectfully moves, pursuant to Rule 42(2) of this Court's Rules, for leave to file a brief *amicus curiae* in support of affirmance. The written consents of the Solicitor General on behalf of Petitioner, and of the Respondent, have been obtained and are annexed hereto. The motion appears to be required because the filing of the *amicus* brief may technically not be timely since no formal extension of the respondent's time to file his brief has been obtained, and the *amicus*

brief is required to be filed "within the time allowed for the filing of the brief of the party supported." *

CONCLUSION

Canadian Javelin Limited Respectfully Prays That Its Motions Pursuant To Rule 42(2) For Leave To File A Brief *Amicus Curiae* Out Of Time.

Respectfully submitted,

REGINALD LEO DUFF
Attorney for Amicus Curiae
Canadian Javelin Limited
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* On or about December 19, 1977 Javelin's counsel learned that the Solicitor General had filed the Government's brief in this case on or about December 13, 1977 (service of which was received by respondent on or about December 17, 1977). On or about December 21, 1977, Javelin's counsel obtained the verbal consent (subsequently confirmed in writing) of the parties hereto to the filing of a brief *amicus curiae*.

Also in late December, 1977, the Solicitor General sent a copy of his brief to Javelin's counsel, and respondent later supplied counsel with a copy of the Appendix, briefs in the Court below, and briefs exchanged in a prior dispute involving the same issues and reported in *Sloan* v. *SEC*, 527 F.2d 12 (2d Cir. 1975), *cert. denied*, 426 U.S. 535. The documents so delivered were extensive and digesting them consumed considerable time.

On or about January 12, 1978, counsel for Javelin wrote to the Clerk of the Court requesting an extension of time to file the *amicus* brief to January 31, 1978, and conveying respondent's oral request to extend his time to January 31. On January 18, 1978, the Clerk informed respondent that Javelin's counsel lacked standing to request an extension of time on respondent's behalf, and informed Javelin's counsel by letter that there was no provision for extending an *amicus's* time to file. Under the Court's Rules, the *amicus's* time is derivatively related to the time of the party he is supporting.

No. 76-1607

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SAMUEL H. SLOAN,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR CANADIAN JAVELIN LIMITED, *AMICUS CURIAE*

Preliminary Statement

Canadian Javelin Limited ("Javelin"), respectfully submits this brief *amicus curiae* in support of affirmance of the decision of the United States Court of Appeals for the Second Circuit, reported in *Sloan* v. *SEC*, 547 F.2d 152 (2d Cir. 1976), declaring unlawful the practice of the Petitioner ("Commission" or "SEC") of instituting successive summary ten-day suspensions of trading in (Javelin's) securities, and directing the Commission to discontinue the practice.[1]

[1] Both the respondent (Brief in Opposition, pp. 30-31), and the Government ("Reply Memorandum" in support of Certiorari,

The decision under review in terms relates to a series of thirty-seven consecutive orders each of which summarily suspended trading in the common stock of Javelin for a ten day period. This series of ten-day orders resulted in a continuous suspension of trading from April 29, 1975 to May 2, 1976. An earlier series of forty-two ten-day suspensions had run continuously from November 29, 1973 to January 26, 1975. *Sloan* v. *SEC*, 527 F.2d 11 (2d Cir. 1975), *cert. den.*, 426 U.S. 935 (1976).[2]

The Government claims (Brief, p. 5, #3) that the first series of suspensions was instituted because Javelin "appeared to have disseminated false and misleading press releases concerning its business activities," [3] and the second series was instituted because (Brief, pp. 3-5)

> "the Royal Canadian Mounted Police had commenced an extensive investigation into alleged manipulation of

passim), agree that the effect of the decision below was to enjoin the Commission in all cases from resorting to its practice of instituting consecutive summary ten-day suspensions of trading. The Government contends that in this respect the Court below exceeded its statutory authority under section 25 of the Securities Exchange Act of 1934, 15 U.S.C. § 78y, ("the Exchange Act").

[2] Although the second series of suspensions was in force when the Court below dismissed the first petition for review—partly because of the SEC's willingness to give respondent some sort of hearing—on the second petition the SEC argued in the Court below (Brief, p. 2 nt. 1) that only the individual orders entered within sixty days of the filing of the petition were before the Court because of the sixty day requirement for filing a petition for review contained in section 25 of the Act, 15 U.S.C. § 78y. In speaking of the thirty-seven consecutive ten-day suspensions, the Court below implicitly rejected the Commission's argument.

[3] The challenged reports related to a " 'purported development of Panamanian mineral properties' (App. 109)" (Brief, p. 7). Despite the Commission's skepticism as to Javelin's claims that it had found a large copper deposit in Panama, the Panamanian Government subsequently expropriated Javelin's "purported" properties, paying a subsidiary of Javelin approximately $23.5 million in cash and Panamanian Government bonds.

> CJL common stock on the American Stock Exchange and several Canadian stock exchanges."

The Government says that the Commission immediately began its own investigation of the RCMP's "wash trading" charges and that on April 26, 1976 (nearly a year later) it filed a complaint on account thereof in the Southern District of New York. It adds that "Once the public had an opportunity to become familiar with these allegations, the Commission permitted trading in CPL stock to resume." [4]

With respect to both series of suspensions the Commission purports to have acted under what is now section 12(k) of the Exchange Act, as amended, 15 U.S.C. § 78*l*(k) (formerly section 19(a)(4), 15 U.S.C. § 78s(a)(4) (1971)). Each series of suspensions was terminated by the Commission before the Court of Appeals had heard argument on the petition for review directed to it. The Government now argues that because all suspensions were terminated before the second petition for review was argued below the case is moot as to respondent.

On the merits the Government argues that despite the limiting language of section 12(k) of the Act (and of its predecessor)—permitting a summary suspension "for a period *not exceeding* ten days"—and despite a stated congressional "expect[ation]" that the Commission would resort to alternative statutory procedures permitting longer suspensions after notice and a hearing on the record,

[4] This is not strictly accurate. The American Stock Exchange ("AMEX") instituted its own trading halts and suspensions in Javelin's stock which have remained continuously in effect to date since April 30, 1975, before the termination of the SEC's second series of suspensions on May 2, 1976. Moreover, the record discloses an actual agreement by the AMEX to keep trading in Javelin's stock suspended until the Commission agreed to a resumption of trading (App. 22, 24, 26, 28-29, 31).

the Commission is free to institute successive ten day summary suspensions so long as it "make[s] a fresh determination every ten days [that the public interest and protection of investors requires it] as a prerequisite to the issuance of a successive order" (Brief, p. 10-11). Implicity the Court is asked to infer that the "fresh determination" requirement has been satisfied because each of the mimeographd suspension order forms contains the statutory language "public interest and protection of investors."

Summary of Argument

This proceeding is not moot. A government agency cannot preclude judicial review of its allegedly unlawful conduct by temporarily and unilaterally terminating the challenged activity during the pendency of the judicial review proceedings, all the while maintaining the legality of its conduct and asserting its intention to continue it thereafter. Moreover, the challenged practice was actually in effect when the issue came before the Court below, and appears to have been terminated by the Commission only because of the earlier petition for certiorari in this Court, 426 U.S. 935 (denied June 14, 1976), and the renewed petition for review before the Second Circuit (see *post*, pp. 13-15).

On the merits, the Court should reject the Commission's defense of its practice of instituting consecutive summary suspensions. The practice is justified only by a perverse reading of the statute and its legislative history, and primarily upon a plea of necessity—the Government arguing that the Commission's resort to summary suspensions is required by the "public interest and protection of investors" because other statutory remedies are inadequate. In making this argument, the Government unduly de-

nigrates the efficacy of the Commission's statutory power to impose longer-term suspensions after hearing,[5] and wholly ignores the availability of the injunction remedy to which the Commission regularly resorts. Moreover, such an argument is more properly addressed to the Congress than to the courts.

Finally, the Court should reject the Government's tendentious argument that Congress must be presumed to have approved the Commission's practice of instituting consecutive summary suspensions of trading based upon its imputed but illusory knowledge of the practice.

In Point III we suggest that the cases which have held that the statutory language "the public interest" and "the protection of investors" is not an unconstitutional delegation of legislative power did so in the context of defining an agency's rule-making power, or in circumstances in which the statute itself specifically defined congressional policy or required the utilization of the agency's expertise. As used in connection with section 12(k), the language is too ephemeral to warrant what amounts to punitive action in the complete absence of statutory standards, and power so assumed by the Commission has been used by it in an impermissibly arbitrary and capricious fashion.

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[5] Part of the Government's argument is that the longer suspension power, after hearing, applies only to "issuer misconduct." In the portion of its Brief dealing with the inadequacy of its suspension power under § 12(j) (Brief, p. 30 and nt. 11) the Government suggests that the section would not have been available as to the second series of suspensions relating to alleged third-person manipulations because of the absence of "issuer misconduct." In the part of the Brief dealing with mootness, however, we are told that this series of suspensions was lifted once there had been disclosure of "issuer misconduct" (Brief, p. 15, Petition, p. 12, nt. 7).

POINT I

The Controversy Was Not Mooted By The Commission's Unilateral Lifting Of The Challenged Suspension While Asserting Its Right To Enter Such Suspensions At Will.

Respondent's first appeal to the Second Circuit was dismissed, without prejudice to his repleading, because at the time that appeal was heard the first series of ten day suspensions had been lifted by the Commission. Although the second series of suspensions was then in effect, the Court of Appeals noted, 527 F.2d at 12, that the record before it was virtually non-existent and said that:

> "We consider [respondent's] blunderbuss attack frivolous except for his allegation that the 'tacking' of ten-day summary suspension orders by the SEC for an indefinite period constitutes an abuse of that agency's authority and a deprivation of due process. Apparently this question has never been judicially considered and would seem not to be frivolous; see 2 L. Loss, Securities Regulation 854-55 (2d ed. 1961). We cannot decide it on the record before us. The record is entirely silent as to the reasons for the second series of suspensions, commencing in April of this year; we cannot tell whether they are based on substantial evidence, and hence cannot decide if they amount to an abuse of discretion by the SEC. Sloan's pleadings also cover only the *first* series of suspensions, which now have terminated. It may be that Sloan intends to challenge the series of suspensions currently in effect as well. Moreover there was no hearing (or any other proceeding) below before the SEC itself; in fact, there was at the time no formal statutory provision for any such proceeding involving suspension orders. Nonetheless, the SEC on this appeal has indicated that it is willing in fact to grant Sloan some sort of administrative hearing, thus satisfying any possible exhaustion argument, while also contributing to the record we now find insurmountably sparce.
>
> "We therefore dismiss Sloan's appeal but without prejudice to his repleading after an administrative hearing before the SEC, from which judicial review may be sought." [6]

By the time the second petition for review was heard below, the Commission had terminated its second series of suspensions and argued below that the controversy was moot.[7] In rejecting the Commission's argument the Court below said, 547 F.2d at 158:

> "The petitioner claims that he has suffered great loss and damage because the suspension orders frustrated his trade in CJL stock, including short sales, and that each succeeding ten-day suspension expired before he could seek a legal review of the validity of the order. Because of the SEC's continuing policy of roll-over, ten-day suspension orders, the harm to him was 'capable of repetition yet evading review.' *Southern*

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[6] However, given the scant record, there was no reason to "dismiss" the petition for review, rather than vacating the order of the Commission or simply remanding for the promised hearing, *cf.*, *Collins Securities Corp.* v. *SEC*, —— F.2d ——, CCH Sec.L.Rep. ¶ 96,122 (App.D.C. 1977); *Nasser & Co.* v. *SEC*, —— F.2d ——, CCH Sec.L.Rep. ¶ 96,185, at p. 92,343 (App.D.C. 1977). Such procedure is expressly contemplated by section 25(a)(5) of the Exchange Act, 15 U.S.C. § 78y(a)(5). Had this procedure been followed the so-called "second" appeal would clearly be seen to be but a continuation of the original controversy, rendering the mootness argument untenable.

[7] As noted above (p. 3, nt. 4), the AMEX suspension has continued in effect to date by agreement with the Commission.

Pacific Terminal Co. v. *ICC*, 219 U.S. 498, . . . (1911); *Sosna* v. *Iowa*, 419 U.S. 393 . . . (1975). See also *Weinstein* v. *Bradford*, 423 U.S. 147, . . . (1975).

"This petition for review was filed before the expiration of the last ten-day suspension of the second series now before us for consideration. Moreover the petitioner had raised the question before this court in connection with its October 15, 1975 decision and again before the SEC in connection with the present case. We declare that the successive roll-over ten-day suspension procedure erroneously adopted by the SEC was improperly pursued and was contrary to the statutory provisions for summary suspensions in force April 30, 1975 to May 2, 1976. The issue of statutory construction and interpretation never became moot and has been ruled upon in this review. The SEC is, therefore, directed to discontinue forthwith its adoption and use of successive ten-day suspension orders to order the suspension of trading in a security for an extended period, i.e. in excess of ten days."

The Government contends (Brief, p. 15, Petition pp. 11-12) that the Second Circuit mistakenly invoked the "capable of repetition, yet evading review" doctrine. Quoting from *Weinstein* v. *Bradford*, 423 U.S. 147, 149 (1975), it argues that the doctrine applies *only* where:

> "(1) the challenged action was in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there was a reasonable expectation that the same complaining party would be subjected to the same action again."

By focusing solely on the second series of suspensions, the Government is able to argue (pp. 16-20) that there is scant mathematical likelihood that respondent will ever again own a security in which trading has been summarily suspended.[8]

In fact, the dismissal of respondent's first petition for review was without prejudice to his challenging *the practice* of summary suspensions, the Court below recognizing that a second series of suspensions was then in effect although neither mentioned in respondent's petition nor supported by any administrative record. Had the Court below permitted an amendment to respondent's first petition for review, or directed a remand instead of dismissing, the very existence of the second series of suspensions would, as the Court below implicitly recognized, have satisfied the need to show "a reasonable expectation that [respondent] would be subjected to the same action again,"[9] thus making a mootness argument untenable.

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[8] Its stress on respondent's *present holdings* ignores the fact that respondent's primary complaint was not as an owner of 13 shares of Javelin, but as a frustrated "short seller" of its stock, unable to "cover" his sales at a profit, 527 F.2d at 12, and *id.*, nt. 2; 547 F.2d at 158. Since Respondent could be "short" at the time the SEC suspends trading in the future with respect to any security which he does not now own, the government's mathematical probability argument (Brief, p. 19, and nt. 8) is irrelevant.

[9] Recognizing this, the SEC's Petition for Rehearing of the decision under review suggested below that the second panel's decision was inconsistent with the first panel's decision dismissing respondent's original petition for review. The Commission argued (Petition, p. 8) that

> "Had the panel of the court deciding that case been of the view that the Commission had no power to order anything more than a single ten day summary trading suspension, there would have been no need for it to have had a record to determine the 'reasons' for the successive suspensions."

Of course the second panel of the Second Circuit cannot be assumed to have condemned *any* repetition of a ten day suspension, particularly since, as we show below (pp. 21-22, 32-34), there are circumstances warranting the entry of successive suspensions. What the Court below condemned was the rote renewal of suspensions over a long period, justified only by a talismanic invocation of the statutory language.

(a) Mootness does not result from a defendant's unilateral termination of unlawful activities, particularly where it claims the activities to be proper

The Government's attempt to convert the principle of mootness articulated in *Weinstein* v. *Bradford, supra,* and properly derived from the facts of that case, into an all inclusive definition of mootness must be rejected. The mootness doctrine evolved from the provision of Article III of the Constitution limiting federal jurisdiction only to "cases and controversies," and requires that a "case or controversy" exist not merely when the action is commenced but also when it is argued and decided either by a court of appeals or by this Court. *Sosna* v. *Iowa,* 419 U.S. 393, 402 (1975); *DeFunis* v. *Odegaard,* 416 U.S. 312, 318-19 (1974). However, as this Court confirmed in *Nebraska Press Ass'n.* v. *Stuart,* 427 U.S. 539, 546 (1976), a case does not become moot "simply because the order attacked has expired, if the underlying dispute between the parties is 'capable of repetition, yet evading review.'"

Primary among the principles governing the application of the mootness doctrine is that

> "voluntary cessation of allegedly illegal conduct does not . . . make the case moot. . . . For to say that the case has become moot means the defendant is entitled to a dismissal as a matter of right."

United States v. *W. T. Grant Co.,* 345 U.S. 629, 632-33 (1953). In *Grant* this Court overruled a finding of mootness based upon the defendants' unilateral termination of the challenged interlocking directorates (while sustaining the denial of an injunction on other grounds).

Similarly, in *Sibron* v. *New York,* 392 U.S. 40, 52-53 (1968), the Court rejected a suggestion of "mootness" in

the appeal of a criminal conviction where defendant had been incarcerated and released after completing his sentence:

> "Many deep and abiding constitutional problems are encountered primarily at a level of 'low visibility' in the criminal process—in the context of prosecutions of 'minor' offenses which carry only short sentences. We do not believe that the Constitution contemplates that people deprived of constitutional rights at this level should be left utterly remediless and defenseless against repetitions of unconstitutional conduct. A State may not cut off federal review of whole classes of such cases by the simple expedient of a blanket denial of bail pending appeal. . . . [A] State may not effectively deny a convict access to its appellate courts until he has been released and then argue that his case has been mooted by his failure to do what it alone prevented him from doing." [10]

As we shall show below (pp. 13-15, 16-18), any abatement of the present controversy could result solely from the Commission's evidently conscious effort to render it moot.

Nor is this case moot under the principle of *DeFunis* v. *Odegaard,* 416 U.S. 312, 319 (1974), in which this Court dismissed an appeal challenging reverse discrimination in the law school of the State of Washington because the petitioner was in his last term of school and respondents had represented that regardless of how this Court decided the appeal petitioner would be permitted to complete the

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[10] *Sibron* is not inconsistent with *Weinstein,* because Sibron's interest in establishing that he had been wrongfully convicted, *i.e.,* that he was not an ex-convict, persisted notwithstanding that he had served his short sentence. In *Weinstein* respondent, being at liberty, could have no constitutional interest in the manner in which North Carolina's parole system was being conducted.

term and graduate, in accordance with another established school policy. A majority of this Court held the controversy moot because:

> ". . . Defunis will never again be required to run the gantlet of the Law School's admission process, and so the question is certainly not 'capable of repetition' so far as he is concerned."

Dissenting from the dismissal for mootness, Mr. Justice Brennan, joined by Justices Douglas and Marshall, wrote, 416 U.S. at 348-49, that respondents could not, by their concession, render the controversy moot, particularly since they maintained the correctness of their position:

> "In these circumstances, and because the University's position implies no concession that its admissions policy is unlawful, this controversy falls squarely within the Court's long line of decisions holding that the '[m]ere voluntary cessation of allegedly illegal conduct does not moot a case.' . . . Since respondents' voluntary representation to this Court is only that they will permit petitioner to complete this term's studies, respondents have not borne the 'heavy burden,' . . . of demonstrating that there was not even a 'mere possibility' that petitioner would once again be subject to the challenged admissions policy. . . . On the contrary, respondents have positioned themselves so as to be 'free to return to [their] old ways.' . . ."

Under the majority's decision the present controversy is not moot since, unlike *De Funis*, neither respondent nor Javelin has the slightest realistic hope of "never again being required to run the gantlet" of the challenged practice, Javelin being one of the Commission's favorite targets, and respondent apparently being a congenital speculator

likely to be speculating with securities subject to suspensions. The majority found *De Funis* moot because a school policy other than that under attack would virtually assure De Funis's graduation, so that the case resembles *SEC* v. *Medical Committee for Human Rights,* 404 U.S. 403 (1972).[11] The dissenters' position of course sustains the continuing controversy here. Moreover, Mr. Justice Brennan's dissenting opinion in *DeFunis* recognizes that the burden of showing mootness rests with the party arguing mootness and also gives a negative weight to the respondent's intransigent claim of right. Manifestly this bodes ill for the Government's present claim of mootness.

(b) Respondent's claim is not moot because the Commission manifestly terminated the suspensions in order to frustrate pending judicial proceedings challenging the practice

The Government argues (Brief p. 16) "that the case became moot once trading in CJL stock was permitted to resume." As we have noted above, that argument could as readily have been made with respect to the first series of suspensions although the second series was in effect when the case reached the Court of Appeals. Moreover, an examination of the facts makes it clear beyond cavil that the Commission's termination of the second series of suspensions itself appears to have been calculated to frustrate judicial review of the practice.

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[11] In *Medical Committee* the Company submitted the stockholder proposal to a vote and, under a different Proxy Rule, the lack of stockholder support entitled it to ignore petitioner's request for the following three years. In *Mancusi* v. *Stubbs,* 408 U.S. 204, 206 nt. 1 (1972), *Medical Committee* was explained as having become moot

> "not because of compliance by the S.E.C. with the judgment under review, but because of the action of Dow Chemical which was not required to do anything by that judgment."

Respondent's first petition for review was denied without prejudice by the Court below on October 15, 1975. *Sloan* v. *SEC*, 527 F.2d 11 (2d Cir. 1975). His initial demand for the promised administrative hearing was rejected for lack of verification and for other unspecified technical inadequacies, *Sloan* v. *SEC*, 547 F.2d at 156, and his renewed request to the Commission was filed on March 11, and denied by the Commission (as was a hearing) on April 21, 1976. On the same day it entered the thirty-seventh consecutive ten-day suspension order in this series, *ibid.*

On April 19, 1976 Sloan had filed his petition for certiorari to review the Second Circuit's dismissal of his "first" petition for review, and on April 23, 1976, during the pendency of the thirty-seventh suspension, respondent filed his "second" petition for review in the Court of Appeals.[12]

When the thirty-seventh suspension expired on May 2, 1976 it was not renewed, the decision allegedly having been made (Brief, pp. 4-5), solely because on April 26, 1976 the Commission had filed its wash trading complaint

[12] On April 22, 1976, the day following the entry of the thirty-seventh suspension of trading in Javelin's stock, the Commission summarily suspended trading in thirty-four other securities, Exchange Act Rel. No. 12,360 (Apr. 22, 1976). However, prior to the filing of the Government's Brief in Opposition on May 30, 1976, the Commission had lifted all but two existing suspensions of trading—those in securities of the successor to Equity Funding Corporation, and in Continental Vending Machines Corp. (which had been under continuous summary suspensions for thirteen years and three months, since March 8, 1963!), and even the latter suspension was lifted on June 2, 1976 (*see Wall Street Journal*, June 3, 1976, cf., App. 189). Thus the Brief in Opposition was to say (p. 2) that one of the questions before the Court was "Whether the foregoing issues have become moot because no order summarily suspending trading is any longer in effect." Certiorari was denied on June 14, 1976, 426 U.S. 935.

in the Southern District of New York, and "Once the public had had an opportunity to become familiar with these allegations, the Commission permitted trading in CJL stock to resume." This contention does not ring true, particularly since the Commission did not lift the first series of suspensions despite the public's having "had an opportunity to become familiar" with its charges.[13] Moreover, the SEC apparently knew as early as April 23, 1976 that the suspension would not be renewed upon its expiration.[14]

In refusing to grant respondent's petition for review in April 1976, the Commission assigned two additional reasons for continuing the suspensions of trading in Javelin's stock. One of these was that "a number of private civil suits are pending in Canada involving a dispute regarding control of the company" (Brief, p. 8), and the other was that "CJL was 'delinquent with respect to the filing of its 10-K report' (App. 110)" (*id.*, nt. 5). Both of these situations, which allegedly warranted a reimposition of a suspension on April 21, 1976, continued in effect on May 2, 1976, when the suspension expired and was not renewed.

[13] The first series of suspensions was not terminated in 1973 when the Commission filed its complaint or even after the consent decree was entered on July 17, 1974 (Brief, p. 7 nt. 4), after disclosure of "issuer misconduct." The summary suspensions continued for six more months, to January 26, 1975.

[14] Sloan stated below, (Dkt. 76-4110 (2d Cir.), Brief, p. 6) that when he filed his "second" petition for review he also moved by order to show cause to stay the existing suspension of trading and to expedite the appeal, and that that order was frustrated by an *ex parte* telephone call from an SEC attorney to the Court of Appeals Clerk, advising the Clerk that the pending suspension would not be renewed upon its expiration on May 2, 1976. We obviously are not in a position to verify this assertion, which, if true, would bolster our view that the termination of the suspensions was dictated solely by litigation necessities—including the plea of mootness—and had nothing to do with the public interest or the protection of investors.

The contest for control of Javelin's management was not resolved until July 30, 1976 (and even then was subject to appeals in the Canadian courts in which the Commission itself attempted to participate through a nominee),[15] while the delinquency in filing the Form 10-K continued until December 1976. The Commission did not regard these as inconsequential facts. (See *post*, p. 26 nt.)

These is a further indication that the Commission's lifting of the trading suspensinons was motivated only by a desire to preclude judicial review of the practice. On November 8, 1976, when the Commission did finally get around to suing Javelin for "remedial" injunctive relief on account of its "delinquent" filings, it did not follow its routine practice of simultaneously suspending trading in the securities of the issuer so sued. Had it done so, it would have made a shambles of the mootness argument it had made in the Court of Appeals while the second petition for review was actually *sub judice*. Argument had been heard on October 13, 1976, only three weeks before the filing of the District of Columbia complaint, and decision was not had until November 18, 1976 (subject to revision on reargument on December 27, 1976).

Had the Commission followed its normal procedure of simultaneously suspending trading, the Court of Appeals would have had to have been advised that a new series of suspensions was in effect, at a time when the petition for review had already been argued and was awaiting decision, and it would have been obvious that there was no merit whatever to the Commission's contention that

[15] On the issue of control, the SEC actually induced Judge MacMahon of the Southern District of New York, who had in 1974 entered the consent injunction referred to in the Government's Brief (p. 7, nt. 4), to designate Javelin's Special Compliance Counsel under that injunction to intervene in Canadian court proceedings in opposition to the seating of the present management.

respondent is unlikely once more to "be subjected to consecutive orders suspending trading within the foreseeable future."

The question is whether the Commission is capable of or likely to engage in the underhandedness and intellectual dishonesty which our arguments imply. Unfortunately, as is readily demonstrated by the comments of judges in a number of recent cases, it is clear that the Commission regularly does resort to dubious tactics more attuned to winning cases by any means than to serving the interests of justice or elucidating the law. The classic condemnation of the Commission's partisan tactics is found in many of the opinions in *SEC* v. *Great American Industries, Inc.*, 407 F.2d 453, 455 (2d Cir. *en banc*, 1968), *and see*, Moore, *J.*, dissenting, *id.*, at 480-81.

Among the more recent judicial rebukes is Judge Werker's unreserved condemnation of the Commission's dissimulation as *amicus* in *Byrnes* v. *Faulkner, Dawkins & Sullivan*, 413 F.Supp. 453, 471 nt. 26 (S.D.N.Y. 1976), *aff'd, other grds*, 550 F.2d 1310 (2d Cir. 1977). Similarly, Judge Haight was emphatic in his condemnation of the conduct of two members of the Enforcement Staff in intentionally misleading defense counsel in *United States* v. *Fields*, —— F.Supp. ——, CCH Sec.L.Rep. ¶ 96,074 (S.D.N.Y. 1977). And, Judge Edward Weinfeld condemned both the Commission's Staff and defense counsel for their lack of forthrightness in representing to the Court that there had been agreement on the terms of a settlement, and condemned the Commission's unprincipled effort thereafter retroactively to change the terms of a consent decree. *SEC* v. *General Host Corp.*, —— F.Supp. ——, CCH Sec. L.Rep. ¶ 96,154, at pp. 92,215-16 (S.D.N.Y. 1977).

The *amicus* respectfully submits that the termination of the second series of suspensions was not a coincidence but

manifestly was timed to preserve the mootness argument, which was and is sham.[16] The Court below correctly held that the controversy was not mooted by the Commission's unilateral termination of the second series of summary suspensions, and its decision on the point should be affirmed.

POINT II

The Court Below Correctly Held That The Commission Exceeded Its Statutory Authority By Routinely Imposing Consecutive Summary Suspensions Of Trading.

The Government argues that the Court of Appeals erred in holding on the merits that section 12(k) of the Exchange Act, 15 U.S.C. § 78*l*(k), forbids successive ten-day suspensions in trading. In pertinent part the statute provides:

> "If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security (other than an exempted security) for a period not exceeding ten days . . . No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, any security in which trading is so suspended."

Necessarily the decision below relied heavily upon the statutory language authorizing summary suspensions of trading "for a period not exceeding ten days," the Court also being influenced by the existence of an alternative suspension power under section 12(j) of the Exchange Act, 15 U.S.C. §78*l*(j).

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[16] Our criticism of the Commission is not intended in any way to reflect upon the integrity of the Solicitor General or his Office.

The Government's disagreement with the Court of Appeals largely depends upon its own construction of section 12(k) itself; upon the asserted insufficiency of alternative remedies; upon the assumed acquiescence of Congress in the challenged practice; and upon a collection of imagined evils which it says will flow from the decision below. Upon analysis, none of these reasons warrants a reversal by this Court.

(a) Section 12(k) cannot be tortured into authorizing successive suspension orders for a single violation or condition

The Commission's statutory construction argument is capsulized at page 21 of its Brief:

> "Section 12(k) . . . affirmatively grants to the Commission authority to suspend trading in individual securities. For the purposes of the present discussion, the only relevant limitations the statute places on that authority are (1) that, before an order to suspend trading is issued, the Commission must determine that the suspension is required by the public interest and the protection of investors, and (2) that any single order may remain in effect for not more than ten days. These two limitations do not bar the Commission from issuing a new suspension order upon the expiration of an earlier order. They necessitate only that, as a prerequisite to the issuance of a successive suspension order, the Commission reassess the circumstances pertaining to the security and make a fresh determination of what the public interest and the protection of investors require."

To avoid the inhibitory language "for a period not exceeding ten days," the Government engages in a remarkable syllogism (pp. 22-23). It argues that the quoted lan-

guage obviously could not prevent the Commission from issuing a second ten-day suspension order on new evidence of manipulation occurring a month after the termination of an earlier summary suspension order, so that the language

> "'for a period not exceeding ten days' therefore can only be read as limiting the duration of a single suspension order, not as limiting the amount of time that a particular security may be subject to suspension of trading."

This step leads the Government to the next—that if a second manipulative scheme were uncovered during the first suspension, "No statutory purpose would be served by requiring an intervening period during which trading would resume." The second step inevitably leads to the third, which is, however, a complete *non sequitur*:

> "nothing in the statute compels the Commission to consider only new evidence in evaluating the needs of the investing public. To the contrary, it is consistent with the statute for the Commission, even in the absence of new evidence of fresh manipulative activity, to determine that existing conditions are such that the public interest and the protection of investors require a renewed suspension of trading.
>
> "In short, the statutory language does not bar successive suspension orders at all. It requires only that the Commission make a new determination of the public interest, and of the needs of investors, before issuing a successive order suspending trading for a further ten-day period."

This entire argument is rendered untenable by the fallacious assumption that "the public interest and protection

of investors," which Congress made the touchstone for imposing a suspension "for a period not exceeding ten days," may itself be invoked to ignore the express congressional limitation. Moreover the Government's argument wholly ignores the manifest fact that the summary suspension procedures were intended by Congress to be only an interim stopgap designed to enable the Commission to resort to more meaningful and permanent remedies, rather than the ultimate remedy of choice which it has become.

We agree with the first step of the Government's argument: a summary suspension order does not exhaust the Commission's authority to enter a later ten day order when there is evidence of a new violation or event which threatens an orderly market. Notably, a number of the events which the Commission has said warrant summary suspensions are, in their nature, of the sort which might be remedied by a single suspension, and thus not entail the rote reinstitution of successive summary suspension orders, which is the practice which the Court of Appeals condemned below.[17]

Similarly, the occurrence of an event independently warranting suspension shortly before the expiration of an unrelated suspension order would justify a renewed order.[18] However, that the entry of one ten day summary

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[17] Thus a "crisis type" situation (p. 25, item #1) might be followed a month or six weeks later by a rumor affecting the trading markets (p. 25, item #5), or by a request from the issuer for a suspension so that a public announcement can be made (*id.*, p. 31, nt. 12), or notification by a court of an impending decision likely to have an effect on the market price of a security (*ibid*). Each such occasion for summary suspension is one in its nature likely to have no long-lasting effect, and the remedy of a short summary suspension of trading accords with the statutory framework.

[18] For example, the "crisis type" (p. 25, item #1) might be followed by a "severe inadequacy of . . . financial information"

suspension does not exhaust the Commission's power to enter a second order, either after a short interval or at the expiration of the earlier order, scarcely gives the Commission free reign to issue a long string of ten-day suspensions upon the ritualistic "finding" that "the public interest and protection of investors" requires it. Some violations or events, by their nature, do not lend themselves to speedy disposition, and resorting to a protracted series of ten-day suspensions, save to buy time until more appropriate procedures can be initiated, is an abuse of the emergency character of the power granted by Congress.[19]

(p. 25, item #3). One can postulate that a listed issuer's president resigns on March 22, 1977 in suspicious circumstances. Before the expiration of the ten day suspension entered upon his resignation the issuer becomes delinquent in filing the Form 10-K Annual Report due on March 30, 1977. Since the delinquency itself does not occur until just before the expiration of the initial ten day suspension period, the issuer's failure to file the timely Form 10-K might also warrant a new ten-day suspension so as to enable the Commission to sue for an injunction or to commence proceedings under section 12(j).

[19] The fact that the Commission has adopted an administrative procedure to give a semblance of due process to persons claiming to be aggrieved by summary suspension order (Brief, pp. 6-7, nt. 3, Exchange Act Release No. 12361, 41 Fed.Reg. 18290) is singularly unimpressive. By analogy to this Court's holding in *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 212-13 (1976), the Commission's regulations cannot expand the coverage (or supply missing constitutional prerequisites) of a statute. Secondly, the new administrative procedures themselves provide no standards, and when coupled with language like "the public interest and the protection of investors" are meaningless. Thus, the Commission might and doubtless would choose to credit the RCMP's unproved charge of manipulations in Canada as preempting respondent's showing of real and substantial damage to himself from the suspension, since obviously respondent is not in a position to negate the RCMP's charge so that "there is no genuine issue as to any material fact." That the new procedure is little more than a charade is demonstrated by the manner in which the Commission actually dealt with respondent's requests.

The Court of Appeals correctly held as a matter of statutory construction that the language "for a period not exceeding ten days" rendered unlawful the Commission's practice of rote reinstitution of summary suspension orders.

(b) The Commission's preference for summary suspensions over other alternative remedies does not authorize it to ignore the terms of the statute

The Government argues that the Court below improperly gave weight to the existence of the suspension remedy provided by section 12(j), and (Brief, p. 29) that "the court did not grasp the significant differences between these two statutory authorities . . ." This argument is based upon several inherent differences between sections 12(j) and 12(k).

Seeking to justify the Commission's repeated summary suspensions of Javelin's stock, the Government argues that section 12(j).

> "applies only to securities registered with the Commission, *i.e.*, securities traded on a national securities exchange or issued by corporations having assets of $1 million or more and 500 or more shareholders"

whereas section 12(k) applies to all securities traded in the over-the-counter market (Brief, pp. 29-30). However, Javelin's stock was at all times registered and listed on the AMEX, and subject to section 12(j), so that this purported justification for resorting to section 12(k) is inapplicable here.

The Government next argues that section 12(j) "may be invoked only where the Commission finds misconduct by the issuer," whereas trading may be suspended under section 12(k)

> "whenever the public interest and the protection of investors so require, including situations that involve no misconduct by the issuer, *e.g.*, in cases involving manipulation or fraud by third parties, in corporate crises, in situations where adequate financial information is unavailable and where markets have been disrupted by speculation based upon rumors of doubtful accuracy. In the latter situations, the Commission is without authority to act under Section 12(j): even when the disruptive conditions persist for more than ten days, suspension of trading under Section 12(k) remains the only effective protection immediately available to investors." (*Id.*, pp. 30-31).

Necessarily Congress must have knowingly incorporated the "issuer misconduct" requirement into section 12(j) and its predecessors. However, while this difference between the two provisions does exist, it evidently has no bearing on the Commission's choice of remedy in Javelin's case, demonstrating both that the Commission prefers to ignore section 12(j) and resort to summary suspensions, and that the Commission displays remarkable flexibility in its selective definitions of "issuer misconduct," depending upon the point it is seeking to make.[20]

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[20] As respects the first series of suspensions, there can be no question that what was charged was "issuer misconduct" since the Commission claimed that the series of forty-two summary suspensions was occasioned because Javelin "appeared to have disseminated false and misleading press releases concerning its business activities" relating to the "purported development of Panamanian mineral properties" (Brief, pp. 5, 7, App. 110). As to this series, therefore, § 12(j) or its predecessor was available and there was no justification for resorting to § 12(k).

As respects the second series of suspensions, dealing with claimed "wash trading," the Government waffles on the question of "issuer misconduct." As we have previously noted (*ante*, p. 5 nt. 5), in the portion of its Brief dealing with the inadequacy of its suspension power under § 12(j) (Brief, p. 30 and nt. 11) the Government suggests that the section would not have been available because of the lack of "issuer misconduct." Yet in the part of the Brief dealing with mootness, it claims that the second series of suspensions was terminated once there had been disclosure of "issuer misconduct" (Brief, p. 15, Petition, p. 12, nt. 7).

The Government next argues that unless section 12(k) is available to the Commission, section 12(j) is inadequate because there simply is insufficient time to obtain the determination "on the record after notice and opportunity for hearing" that the issuer has violated the Exchange Act or regulations thereunder (Brief, pp. 31-32), stating that "As a general rule, at least six months is required to hold a hearing" (*id.*, p. 32 nt. 13). That certainly would not be true in the case of a late filing since a violation consisting of a failure to file will be known at once.[21] Nor does the argument explain why the Commission cannot bring an injunction action — a remedy which it widely utilizes, frequently in disregard of known facts which render success problematical. The injunction remedy is wholly ignored in the Government's discussion of alternatives to summary suspensions.[22]

Only in passing—and then only by way of quoting from Professor Loss's treatise—does the Government mention the availability to the Commission of injunctive relief as another remedy not suffering from the alleged inadequacies of section 12(j) (Brief, p. 25):

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[21] By analogy to § 15(b)(6), 15 U.S.C. § 78*o*(b)(6), the due process requirement might be satisfied by "affidavits and oral arguments." Less violence would be done to the statute than is done by arbitrarily ignoring the statutory ten-day limitation on summary suspension.

[22] The Commission waited more than seven months to sue Javelin on account of the "delinquency" in filing its 1975 Form 10-K, *SEC* v. *Canadian Javelin Limited, et al.*, D.D.C. C.A.No. 76-2070 (filed November 8, 1976), and when it did sue it also sued as aiders and abettors officers, directors and stockholders who were out of power when the delinquencies first occurred, despite the fact that section 20(c) of the Exchange Act, 15 U.S.C. § 78t(c), makes officers, directors and stockholders of a registrant violators of the Act only if they "without just cause" "hinder, delay, or obstruct" the filing of a report.

> "(2) • • • [T]here is a group of cases in which the suspension was designed to prevent trading until the Commission might obtain appropriate injunctive relief, usually against fraud or manipulation or an unregistered distribution • • • ."

In fact the Commission's resort to injunctions has not been limited to claimed fraud or manipulation. Since November 1972 the Commission has regularly commenced actions seeking injunctive relief against issuers (and occasionally against their officers and/or directors), charging them solely with the violation consisting of late filing of periodic reports and arguing that injunctive relief is warranted regardless of the circumstances and without any need to show *scienter* or wilful disregard of the reporting obligations.[23] The self-evident virtue of such actions (since they can scarcely succeed in achieving their ostensible purpose of compelling an issuer to file a report if circumstances beyond the issuer's control have made a timely filing impossible) would seem to be that they swell the total number of injunction actions commenced—and successfully terminated (since historically most such actions have ended in default or consent judgments)—a factor evidently stressed in the Commission's budget requests to the Congress, but seemingly irrelevant to the statutory considerations of "the public interest and the protection of investors."

The Commission is seldom shy in asserting its right to injunctive relief. In its Reply Brief in the currently pending appeal to the Fourth Circuit in *SEC* v. *American Realty Trust*, Dkt. 77-1839 (p. 12n, nt. 18), it stated:

[23] By September, 1974, less than two years later, some forty-five such actions had been filed in the District of Columbia. *SEC* v. *First Wisconsin Mortgage Trust*, '74-'75 CCH Sec.L.Rep. ¶ 94,793, at p. 96,634 (D.D.C. 1974) (Gesell, *J.*). Almost invariably the filing of such a complaint has been accompanied by a simultaneous summary suspension of trading under section 12(k) (or its predecessor).

> "18. Defendants argue that the Commission should have brought an administrative proceeding against them, not an injunction action (Def. Br. 44-48). This argument ignores not only the discretion reposed in the Commission to enforce the federal securities laws but also the express statutory authority of the Commission to institute an injunctive action whenever it appears to it that a violation of the federal securities laws is occurring or is about to occur. . . . The defendants suggest that the courts, in determining if an injunction is appropriate, should consider whether other discretionary remedies are available to the Commission (Def. Br. 47) and the purported significant collateral consequences of an injunction (Def. Br. 49). This argument not only suggests that the courts should interfere in the Commission's internal decision-making process, but also that the courts are free to disregard the intent of Congress, as expressed in the statute. . . .
>
> "Moreover, this injunctive action, unlike an administrative proceeding, was not brought to correct filings with the Commission nor to assure that future filings with it would be technically correct *but* to enjoin ART and Broyhill from again offering and selling securities to the public or filing reports or soliciting proxies without full disclosure in accordance with the requirements of the acts." [24]

Much of the Commission's effort to justify its resort to consecutive summary suspensions is premised upon the contention that if it is unable to use section 12(k) as it has been using it, it will be unable effectively to execute its

[24] In *SEC* v. *American Realty Trust*, 429 F.Supp. 1148 (E.D.Va. 1977), most of the Commission's claims of wrongdoing were found to be without substance, and while one claim was sustained, injunctive relief was denied on principles enunciated by this Court in *United States* v. *W. T. Grant Co.*, 345 U.S. 629 (1953); *Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944).

statutory responsibilities to act in the public interest and to protect investors. Obviously, if this be the contention, the appropriate remedy is for it to go back to Congress to obtain suitable powers, not to give the existing statute a contrived construction subject to the sort of open-ended abuse to which the Commission has subjected it. As this Court said in *FMC* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 744-45 (1973):

> "If, as petitioner contends, there is now a compelling need to fill the gap in the Commission's regulatory authority, the need should be met in Congress where the competing policy questions can be thrashed out and a resolution found. We are not ready to meet that need by rewriting the statute and legislative history ourselves."

Finally, in eschewing section 12(j) as a suitable remedial vehicle, the Government's brief lapses into wholly inexplicable *non sequiturs*, and to complete misreadings of the statute itself. This is particularly evident in the Government's "Fourth" purported differentiation of sections 12(k) and 12(j) (Brief, pp. 32-33):

> "Fourth, Sections 12(j) and 12(k) differ significantly in the way that they protect investors. Suspension of trading under Section 12(k) is a temporary prophylactic measure the need for which must be determined *de novo* by the Commission every ten days. Trading is permitted to resume when the threat has passed. Moreover, when trading is suspended under Section 12(k), the issuer remains subject to, *inter alia*, the periodic reporting requirements and proxy provisions of the Act, and officers and directors of the issuer and beneficial owners of more than 10 percent of the issuer's stock must continue to file ownership reports with the Commission. See 15 U.S.C. 78m, 78n, and 78p.

These important protections are lost when the registration of a security is revoked pursuant to Section 12(j). As Professor Loss has observed (II Loss, *supra*, at 845):

> "The remedy [of deregistration] is Draconian. When management fails to comply with some provision of the act or the Commission's rules—perhaps because it would just as soon be done with the obligations of registration anyway—it makes little sense to visit the sin on the innocent security holders by depriving them of an exchange market, not to mention the statutory advantages of registration.[14]

[14] "14. Under present law (Section 12(j)), security holders would also be deprived of the over-the-counter market. . . ."

There are several answers to this plaint. First, little need be said about the "temporary prophylactic" character of section 12(k) suspensions, at least the way the Commission has utilized them: the two series of suspensions of Javelin's securities of which respondent complains each exceeded the one-year limitation imposed by section 12(j) itself, involving suspensions totaling 420 and 370 days respectively.[25] Nor is there any merit in the Government's implied suggestion that there is something immutable about the duration of a suspension entered under section 12(j).[26]

Secondly, if the Government seeks to intimate that the investing public is adversely affected under section 12(j)

[25] Other securities have been suspended for periods aggregating more than a year (App. 184-211). In one case such suspensions continued for well over a decade (Continental Vending Machine Corp., App. 189).

[26] Section 12(j) does not require a suspension *for* one year, it only limits such suspensions as the Commission may order to a period *not exceeding* one year. Obviously, in entering the suspension the Commission can condition its termination upon the issuer's bringing itself into compliance with whichever provision of the law or regulations it was violating.

by being deprived of a trading market (*e.g.*, Brief, pp. 33-34, nt. 14), manifestly, long term back-to-back suspensions of trading under section 12(k) have precisely the identical effect of depriving investors of a trading market, except that suspensions under section 12(k) are not accompanied or justified by the procedural protections of a hearing on the record which Congress provided as a prerequisite for all long term suspensions, expulsions or revocations. The Government argues (page 33, nt. 14), that "Under present law (Section 12(j)), security holders would also be deprived of the over-the-counter market." This is misleading because the identical restriction against over-the-counter trading exists with respect to a suspension of trading under section 12(k) (although that portion of section 12(k) is not quoted in the Government's Brief (p. 20)),[27] so that resort to section 12(k) similarly deprives securities holders of an over-the-counter market in the suspended security.

Third, there is no statutory warrant for the Government's implicit assumption that a *suspension* under section 12(j) (as distinguished from a *revocation* of a registration) either terminates the issuer's obligation to file periodic

[27] The final sentence of § 12(k) is identical to that of § 12(j) in forbidding trading by brokers, dealers and exchanges, except insofar as the language of each provisions refers to the specific administrative action taken under the particular sections. Thus, § 12(k) provides:

> "No member of a national securities exchange, broker, or dealer shall make use of the mails or any means or instrumentality of interstate commerce to effect any transaction in, or to induce the purchase or sale of, *any security in which trading is so suspended*."

In § 12(j) the italicized language is replaced by "any security the registration of which has been and is suspended or revoked pursuant to the preceding sentence." Thus the Government's implied argument in footnote 14, that there are substantially different effects upon investors resulting from the use of §§ 12(j) and 12(k), respectively, is simply erroneous and misleading.

reports and to comply with the Commission's Proxy Rules, or ends its insiders' obligation to file beneficial ownership reports (and the related restrictions on short-swing profits) contained respectively in sections 13, 14 and 16 of the Act, 15 U.S.C. §§ 78m, 78n, 78p. The Government's argument seems designed to frighten more than to elucidate, stressing as it does only the power to *deregister* contained in section 12(j), while wholly ignoring the alternative power to *suspend* the registration.

In fact, very few companies now filing reports under section 13(a) will be relieved of their obligation to file periodic reports by reason of a suspension of registration, because their inchoate obligation to file the identical reports would immediately mature under another provision of the Act. Section 15(d) of the Act, 15 U.S.C. § 78*o*(d), explicitly imposes upon any issuer which *has filed* a registration statement under section 12 or under the Securities Act of 1933, or an issuer which has filed an undertaking, the obligation to file "such supplementary and periodic information, documents, and reports as may be required pursuant to section 13 of this chapter in respect of a security registered pursuant to section 12 of this chapter," such duty under section 15(d) being suspended "if and so long as any issue of securities of such issuer is registered pursuant to section 12 of this chapter."

Thus, upon the entry of an order suspending an issuer's registration under section 12(j), the issuer's obligation to file periodic reports would continue unchanged, although the obligation to file might shift from section 13(a) of the Act to section 15(d), which is a change irrelevant to the assumed investor protection resulting from the disclosure of the information which the Commission requires to be contained in such reports.[28]

[28] While the issue is not so clear with respect to the Proxy Rules under § 14(a) and the insider reports and prohibitions on short-

The Commission has ample remedial powers, and this Court should decline its invitation to reverse the Court below so as to give to section 12(k) a reading inconsistent both with its language and legislative history, and with the general framework of the Exchnge Act.

(c) There is no warrant for the Government's argument that in recodifying section 19(a)(4) into section 12(k) Congress gave its sanction to consecutive summary suspensions in all cases

The Government argues (Brief, pp. 27-29) that because the various committees of Congress knew that the Commission resorts to consecutive summary suspensions of trading, therefore Congress must be deemed to have approved the practice in all circumstances. There are three answers to this argument.

(i) Congress cannot be deemed to have consented to all summary suspensions merely because some such suspensions might be authorized by the Exchange Act

In the first place, as our preceding discussion demonstrates (*ante*, pp. 21-22), there are circumstances in which consecutive summary suspensions are consonant with the

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swing profits of §§ 16(a) and (b), respectively—since the two provisions apply only "in respect of any security (other than an exempted security) registered pursuant to section 12 of this chapter" (§ 14(a)), or of "any class of any equity security (other than an exempted security) which is registered pursuant to section 12 of this chapter" (§ 16(a))—we would be surprised if the Commission categorically avowed that a mere *suspension* of registration pursuant to § 12(j) resulted in rendering sections 14 and 16 inapplicable. It is quite one thing for commentators to speculate as to the results of *deregistration*, and for the Commission to accept such conclusions in the context of *deregistration*, and quite another thing altogether for the Commission unequivocally to state that similar consequences flow from a mere *suspension* of a registration statement. The Government's Brief has not said that the provisions of §§ 14(a) and 16(a) and (b) would cease to apply in a suspension situation, nor is it likely to say so in reply.

legislative scheme, so that the fact that Congress did not categorically prohibit them altogether is not probative on the issue involved here. Nor do we understand the Court of Appeals to have said that every such reinstitution is a violation of the statutory command.

Thus there would seem to be no statutory inhibition on the Commission's entering the suspension order dated April 2, 1976 suspending trading in Javelin's stock from April 3 through April 12, 1976 (App. 103) in light of the Staff's having advised the Commission in its memorandum of that date (App. 107-08) that

> "The company [Javelin] is now delinquent with respect to the filing of its Form 10-K due March 31, 1976. CJV's auditors have informed the board that they recently received information which may cause them to revoke their certification of CJV's balance sheet as of December 31, 1973."

Occurring just before the expiration of a prior suspension of trading, either event would warrant a further suspension, given the purpose of section 13(a) to prevent public trading in the absence of accurate current financial information.

Such a suspension would have given the Staff time to prepare a complaint for injunction on account of the late filing or to move for a contempt citation under the 1974 injunction of the Southern District of New York (Brief, p. 7, nt. 4) because of the allegedly false 1973 financial statements (which were filed after, and pursuant to, said injunction). As we understand the decision below, what the Court condemned was the rote reinstitution of summary suspension orders in a manner which did not utilize them as the emergency stop-gap measure which Congress provided to the Commission, but as an ultimate remedy of

choice to which the Commission turns because its use imposes no obligation on the Commission's Staff to prove its real or feigned suspicions, or to justify its conduct beyond regularly parroting the statutory language "the public interest and the protection of investors."

(ii) Congressional acquiescence cannot be inferred from the legislative history

A more serious question raised by the Government's argument is that it ignores the constitutionally authorized procedure for enacting statutes. It is axiomatic that statutes are enacted by the concurrence of a majority of each House of the Congress and the approval of the President. Particularly in circumstances in which the Congress has enacted a statute characterized by its sponsors as merely a recodification without substantial change of prior statutory language, it perverts a salutary principle of statutory construction to invoke such a reenactment or recodification in order to impute to each member of the majority of the two Houses an intimate and detailed knowledge of the contents of Committee Reports accompanying the legislation, which, if closely scrutinized, might have disclosed that a government agency had grossly exceeded its statutory powers. This is so even if approval of the practice might properly be imputed to a friendly Committee or Committee Chairman. As this Court said in *Zuber* v. *Allen*, 396 U.S. 168, 185-86, nn. 21, 24 (1969), "Congressional inaction frequently betokens unawareness, preoccupation or paralysis." [19]

[19] This Court has granted certiorari in two cases involving the so-called "one House veto", *Atkins* v. *United States*, Dkt. 77-214, and *Pressler* v. *Blumenthal*, Dkt. 77-450. It seems to us that the Government's position here raises considerably more serious constitutional problems since, instead of a "one House veto," we deal here with a "no-House enactment."

Moreover, various sections of the Exchange Act contain more than one substantive power or limitation. Some of these have been amended from time to time in one particular, while leaving other portions of the section unchanged. The Government's present argument would retroactively validate each unauthorized exercise of power by the Commission, solely by implication, if such exercise were based upon a section which had been amended in another particular or recodified, so long as some disclosure of the unlawful practice were made in passing in the Commission's reports to Congress, or in a congressional committee report.

One such instance of the Commission's (or its Staff's) abuse of power is now before the Second Circuit and may be expected to find its way to this Court before long. It involves section 21(d) of the Exchange Act, 15 U.S.C. § 78u(d), part of which authorizes the Commission to bring injunction actions in the district courts, authorizes those courts to grant an injunction upon a "proper showing," and precludes the assessment of costs against the Commission. That provision had previously been contained in section 21(e), *see* P.L. 94-29, § 17(2) (1975), and was reenacted in 1975 as section 21(d), with relatively minor changes in the language pertaining to the circumstances under which the Commission may seek injunctive relief.

However, section 21(d) and its predecessor also contain another provision which was unaffected by the amendments of 1975 (beyond being transposed from subdivision (e) to subdivision (d)). That provision is that:

> "The *Commission* may transmit such evidence as may be available concerning such acts or practices as may constitute a violation of any provision of this chapter or the rules or regulations thereunder to the *Attorney General*, who may, in his discretion, institute the nec-

essary criminal proceedings under this chapter." (Emphasis added).

Manifestly, as drawn, the statute contemplates that a criminal reference be from the Commission, acting collegially (*i.e.*, five Commissioners appointed by the President with the consent of the Senate), to the Attorney General (also a presidential appointee with the consent of the Senate), with the Attorney General exercising the discretion as to whether to institute criminal proceedings.

In *United States* v. *Fields*, —— F.Supp. ——, CCH Sec. L.Rep. ¶ 96,074 at p. 91,848 (S.D.N.Y. 1977), Judge Haight considered, but declined to invalidate a "working relationship" by which members of the Commission's New York Regional Office make criminal references directly to Assistant United States Attorneys for the Southern District of New York, thus effectively repealing the statutorily imposed procedure of references from the Commission to the Attorney General. In *Fields* the initial reference (Finding # 32, p. 91,842) was actually made to Assistant U.S. Attorney Ira Lee Sorkin, himself an alumnus of the New York Regional Office,[30] betraying an element of incestuousness which the statute manifestly does not contemplate. The acknowledged purpose of the SEC Enforcement Staff members in *Fields* was that "we really want to get TDA" (the issuer), (Finding #32, p. 91,842), a human motive quite understandable in individual members of an organization, and likely to receive a sympathetic reception by an emeritus member of the Commission's Enforcement Staff. In contrast, such motives are unlikely to be acknowledged when the Commissioners act collegially, or to play much of a role in the exercise of the statutory discretion reposed in the Attorney General.

[30] *SEC* v. *Harwyn Industries Corp.*, 326 F.Supp. 943, 945 (S.D. N.Y. 1971).

Putting aside the correctness of Judge Haight's refusal to invalidate the "working relationship", an issue not before this Court at this time, the Government's present argument of congressional acquiescence would apply by hypothesis to ratify the "working relationship" between the New York Regional Office and the U.S. Attorney for the Southern District of New York, because of an unrelated amendment or a recodification of former section 21 (e) in 1975, notwithstanding that in approving the recodification and amendment of former section 21(e) in unrelated particulars, the Congress cannot reasonably be assumed to have approved an unauthorized practice merely because it did not categorically forbid it. That, however, is what the Government appears to be arguing in the present case.

This Court has itself answered the Government's argument (and also the related argument that the Commission's expertise requires great deference to be given to its reading of a statute which it helped to draft). In *Federal Maritime Commission* v. *Seatrain Lines, Inc.*, 411 U.S. 726, 745-46 (1973), Mr. Justice Marshall said for the Court:

> "But the Commission contends that since it is charged with administration of the statutory scheme, its construction of the statute over an extended period should be given great weight. . . . This proposition may, as a general matter, be conceded, although it must be tempered with the caveat that an agency may not bootstrap itself into an area in which it has no jurisdiction by repeatedly violating its statutory mandate. In this case, however, there is a disjunction between the abstract principle and the empirical data. The court below made a detailed study of the prior Commission cases relied upon by petitioner to bolster its interpretation of the statute and concluded that

none of them involved assertion of jurisdiction over a case such as this, where the agreement in question imposed no on-going obligations. We find it unnecessary to decide whether every prior case decided by the Commission can be reconciled with our opinion today. It is sufficient to note that the cases do not demonstrate the sort of long standing, clearly articulated interpretation of the statute which would be entitled to great judicial deference, particularly in light of the clear indications that Congress did not intend to vest the Commission with the authority it is now seeking to assert. As this Court held in a related context,

> "'The construction put on a statute by the agency charged with administering it is entitled to deference by the courts, and ordinarily that construction will be affirmed if it has a "reasonable basis in law." • • • But the courts are the final authorities on issues of statutory construction, *FTC* v. *Colgate-Palmolive Co.*, 380 U.S. 374, 385, and "are not obliged to stand aside and rubber-stamp their affirmance of administrative decisions that they deem inconsistent with a statutory mandate or that frustrate the congressional policy underlying a statute." *NLRB* v. *Brown*, 380 U.S. 278, 291.' *Volkswagenwerk Aktiengesellschaft* v. *Federal Maritime Commission*, 390 U.S. 261, 272 (1968).
>
> "In this case, we find that the Commission overstepped the limits which Congress placed on its jurisdictions."

Finally, we believe that the fact that S.Rep. 94-75, 94th Cong., 1st Sess., at 106 (1975), U.S.Code Cong. & Admin. News 1975, pp. 283-84, stated that "the Commission is expected to use this section [12(j)] rather than its ten-day suspension power in cases of extended duration" is far

more significant than the fact that some members of the relevant congressional committees may have known of some aspects of the Commission's practice. *Semble, accord, Sloan* v. *SEC*, 547 F.2d 152, 157 (2d Cir. 1976).

(iii) It is likely that Congress was not informed of the extent to which the Commission resorted and would resort to summary suspensions of long duration

If the Commission's disclosures here and in the Court below are indicative, it is doubtful that the Commission had given Congress enough of the details respecting its practice of entering consecutive summary suspensions to permit any kind of inference as to congressional approval.

In the present case, as in *FMC* v. *Seatrain Lines, Inc.*, *supra*, "there is a disjunction between the abstract principle [asserted by the Government] and the empirical data" upon which the assertion is made. Congressional approval of the practice of consecutive summary suspensions is claimed to have resulted from the fact that in 1964, when the statute was amended to extend the summary power to over-the-counter securities, the House and Senate Committees were advised that the Commission interpreted the provision to authorize reinstitution of suspensions, and the Senate Committee is quoted as stating "The committee accepts this interpretation." (Brief, pp. 27-29). But an examination of the Commission's actual practice over the years negates any thought that Congress in 1964 had any idea of the manner in which the Commission had utilized the power in the past, intended to utilize it, or has utilized it since Congress amended the statute.

Beyond being told that the congressional committees did know that the Commission does impose consecutive summary trading suspensions, we are not informed as to

how much of the Commission's practice was actually disclosed to those committees. However, it is a fair inference that the Commission's description of its practice in the present brief parallels the sort of disclosures which it actually made to Congress. We examine these disclosures in the light of the information supplied by the Commission concerning trading suspensions between February 11, 1959 and January 3, 1975 (App. 183-211),[31] and draw some inferences therefrom.

Speaking of the Commission's pre-1964 use of consecutive summary trading suspensions, the Government says (Brief, pp. 23-24):

> "The Commission's first use of its summary suspension power under the predecessor of Section 12(k) involved successive orders that resulted in the suspension of trading for almost one month. *Elastic Stop Nut Corp. of America*, Securities Exchange Act Release No. 3626 (November 29, 1944). Before 1964, when the Commission's summary suspension power was extended to securities traded in the over-the-counter market, [i.e., in the ensuing twenty years] the Commission had exercised that power with respect to 30 securities, and in only one case was trading permitted to resume upon the expiration of the first ten-day suspension."

In short, the information presumably given to the congressional committees in 1964 was that in the prior twenty years the Commission had instituted successive summary

[31] The Commission lists the suspensions alphabetically, which makes App. 183-211 virtually useless. We have rearranged the suspensions chronologically and annexed them as an Appendix to this Brief, thus allowing some meaningful analysis of the historical use of summary suspensions as well as a cross-reference to the Commission's own documents.

suspensions at the average rate of only one and a half suspensions a year, lasting up to a month. The information provided in the Appendix relates only to the years 1959 through 1963 (six of the twenty years).[32] One of those years (1963) involved two suspensions (including one which ultimately lasted more than thirteen years); two of the years (1959 and 1961) involved only one suspension each, and there were none in 1960. However there were seven in 1962, including four lasting six months or more, a total for the five years as to which information is given of twelve suspensions. We wonder whether Congress might not have been troubled, had it known, with the manner in which suspensions were imposed in 1962, or curious as to the reason why there were so many suspensions that year which involved such long durations. It is likely that the durations themselves were never disclosed to Congress, else its committees might not have been so sanguine about the Commission's reasonableness in exercising this summary suspension power.

Still phrasing the issue in terms of averages, the Commission also informs the Court (Brief, p. 18; Reply Memo. on Petition for Cert., pp. 2-3), that following the amendment of 1964 it has also been circumspect in exercising its summary suspension of trading power:

> "First, 'the Commission's power to issue consecutive 10-day suspension orders has been exercised with respect to an average of 20 securities each year for the past 12 years' (Pet. Reply Mem. 2-3), and it is not unreasonable to project that trend into the future (assuming *arguendo* that the Commission retains the power to issue such orders). Second, the Commission's

[32] The 1974 suspension of Fotochrome, Inc. (App. 192) was entered after the effective date of the 1964 amendment, see P.L. 88-467, § 6, 78 Stat. 570-574, August 20, 1964.

staff has estimated that between 25,000 and 30,000 corporations have publicly traded stock."

At page 24 it adds:

"Between the enactment of the 1964 amendment and the decision of the court of appeals in November 1976, the Commission had exercised its authority summary to suspend trading with respect to 941 securities; in 235 of these cases successive orders were issued resulting in the suspension of trading for more than ten consecutive days."

This language implies that the increase in the raw number of summary suspensions, and in the number of successive summary suspensions, was a function of extending the power to enter summary suspensions of trading to over-the-counter securities by the enactment of former section 15(c)(5) in 1964, and did not represent much of a change of policy since the number of securities now subject to suspension was drastically increased.

Yet an examination of the information furnished in the Appendix discloses some disturbing elements in the Commission's practice and suggests that the power is being used both arbitrarily and irrationally. Thus, the following facts emerge, which we set forth in tabular form:

Year	No. Suspensions	No. Consec. Suspen.	Suspen. 6 Mos. or More
1964	1	1	0
1965	9	8	2
1966	10	9	4
1967	28	22	6
1968	37	29	6
1969	52	18	4

Year	No. Suspensions	No. Consec. Suspen.	Suspen. 6 Mos. or More
1970	22	4	0
1971	34	7	3
1972	50	28	6
1973	236	43	11
1974	168	17	2

Although we are not provided with detailed information for 1975 and 1976, which are included in the twelve year period referred to in the Government's Brief, the first fact which emerges is that in three of these years (1968, 1972 and 1973) the number of consecutive suspensions in each of those years roughly equalled or exceeded the *total* number of consecutive suspensions imposed in the entire twenty year period preceding the 1964 amendment. Moreover, in each year other than 1964 and 1970, the number of consecutive summary suspensions exceeded the number imposed in 1962, the biggest year prior to the 1964 amendment.

Secondly, in each of the eleven years for which information is provided, other than 1964 and 1970, there was a minimum of two suspensions having a duration of six months (18 consecutive suspensions) or more. During these same years (exclusive of 1974),[33] consecutive suspensions which exceeded one year's duration (the limitation imposed by section 12(j) upon suspensions) were imposed on at least eleven securities (1965, 1966, 1968, 2 in 1971, 2 in

[33] No termination date is given for two of the consecutive suspensions imposed in 1974: Nicoa Corp., suspended June 18, 1974 (App. 200), and Bio-Medical Sciences, suspended October 11, 1974 (App. 187), so that presumably these suspensions were in effect as late as January 22, 1975, the last date given in the Commission's document.

1972,[34] 4 in 1973).[35] Only two pre-1964 suspensions lasted longer than one year: one of them, however, lasted for thirteen and a half years.[36]

Third, bearing in mind that a summary suspension is authorized upon the Commission's finding that "the public interest and protection of investors" warrants it, commencing at least in 1973, there are some fairly curious seasonal aspects to "the public interest" as disclosed by our chronological rearrangement of the Commission's record of summary suspensions. Thus large numbers of suspensions occurred on certain specific dates:

Date	*No. of Securities Suspended*
April 26, 1973	9
May 7, 1973	11
June 12-13, 1973	10
June 22, 1973	8
July 5-6, 1973	9
August 1-3, 1973	10
August 8, 1973	7
December 4, 1973	9
January 3, 1974	7

[34] The suspensions of two additional securities, First World Corp., suspended May 10, 1972 (App. 192), and Clinton Oil Corp., suspended May 31, 1972 (App. 188) were one week short of a year's duration.

[35] Apart from Javelin, suspended on November 29, 1973, three other suspensions are given for which no termination date is provided (Equity Funding Corp., suspended March 28, 1973 (App. 191), BBI, Inc., suspended May 24, 1973 (App. 187), and Royal Properties, suspended June 22, 1973 (App. 204)), each of which apparently continued into May or June 1976 (*see ante*, p. 14, nt. 12).

[36] The suspension of trading in the securities of Continental Vending was lifted on June 2, 1976, Exchange Act Release 12505, 9 SEC Docket 787 (June 2, 1976), while the petition for certiorari from the dismissal of respondent's first petition for review was still pending in this Court and the second petition for review was pending before the Second Circuit.

Date	*No. of Securities Suspended*
February 26-28, 1974	13
April 11, 1974	48
May 6-8, 1974	14

What is remarkable about this tabulation—and we are focusing here solely upon the entry of a summary suspension, without regard to whether the summary suspensions was summarily renewed—is the total lack of relation to any event which might justify, for example, the entry of forty-eight suspensions on the single day April 11, 1974. Forty-eight suspensions is more than half again the *total* number of summary suspensions entered during the twenty-year period preceding the 1964 amendment.

The explanation given for the forty-eight suspensions on April 11, 1974 is that they were imposed on account of delinquent Annual Reports on Form 10-K,[37] since summary suspensions are now routinely entered when an issuer becomes delinquent in filing a periodic report. Since 1973, issuers have been required to file their Form 10-K Annual reports ninety days after the close of their fiscal years. A company which reports on a calendar year basis (and we are confident that the Government will not deny that most issuers are in that category) is thus required to file its Form 10-K on or before March 30 (or March 29 in leap years). This in turn means that the Commission waited twelve days (or a longer period than the allowed duration for a summary suspension) before instituting such suspensions *en masse*, rather than instituting suspensions *seriatim* upon ascertaining that the 10-K Report had not been filed with respect to each company. This in turn suggests that "the public interest and the protection

[37] Exchange Act Release 10732, 4 SEC Docket 82 (April 11, 1976).

of investors" is not so high a priority as the Government's Brief here suggests.[38]

Similarly there is no obvious explanation for the large number of suspensions on May 7, 1973 and May 6 through 8, 1974, a total in the two years of twenty-five suspensions. In each case the date of suspension is some five weeks after the 10-K Annual Reports would be due for a calendar year issuer, and occurs at least a week before the First Quarter Forms 10-Q are due. Nor does any other date of numerous summary suspensions set forth in the preceding table tie conveniently into a filing date.

The one fact which emerges from the Commission's own record of summary suspensions is that the Division of Enforcement is becoming more and more enamored of resort to summary procedures not requiring any hearing or other due process protections, a tendency which should be limited, not encouraged. The Court below properly enjoined the practice.

[38] One other possible explanation for the April 11, 1974 date which seems totally unrelated to the public interest and the protection of investors is the fact that on February 13, 1974 the former Director of Enforcement became a member of the Commission and his successor was appointed. Misc.Rel. U 449, U 450. Manifestly a change of enforcement directors should play little if any part in *the Commission's* evaluation of the public interest and what is required for the protection of investors, if, as claimed, it is *the Commission* which makes these decisions.

POINT III

The Statutory Phrase "In The Public Interest And For The Protection Of Investors" Does Not Authorize The Commission's Practice, And Its Repeated Incantation Of The Phrase Does Not Satisfy The Requirement Of An Independent Evaluation By The Commission Itself.

The Government's argument is that successive summary suspensions of trading are authorized if the Commission independently makes the determination at the onset of each suspension that "the public interest and protection of investors" warrant the further suspension. Apparently, the Commission assumes that including the statutory language in the form orders suspending trading (the form itself only requiring the insertion of dates and name of issuer) satisfies the congressional limitation, although the Staff memoranda (App. 14-108) betray little more than the fact that it was not prepared to take action against the alleged wrongdoing.

Moreover, in urging this construction the Government limits its analysis of the congressional intention to the present section 12(k), 15 U.S.C. § 78*l*(k), and its two predecessor sections, 19(a)(4) and 15(c)(5), 15 U.S.C. §§ 78s (a)(4), 78*o*(c)(5), wholly ignoring the text of surrounding provisions, including other subdivisions of the two predecessor sections. If there is any lesson whatever to be learned from this Court's decision in *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 199-201 ff. (1976), it is that in searching for congressional intent with respect to one section of the Exchange Act, it is not merely appropriate but may be absolutely necessary to consult other related statutory provisions.

Accordingly, in this Point we review the congressional use of the *two* statutory tests of "the public interest" and

"the protection of investors" contained in present section 12(k), in the context of other provisions closely related to former sections 19(a)(4) and 15(c)(5), and then consider whether Congress either has delegated too much power to the Commission in the current section 12(k), or the Commission is simply misreading its governing statute and inferring too much from the statutory language.

(a) Congress could not have intended the rote "finding" of "the public interest" to be a substitute for the notice and hearing otherwise required for long-term suspensions "for the protection of investors"

While the Government's Brief inundates the Court with not less than twenty-one incantations[39] of the phrase "the public interest and protection of investors" or some variant thereof, manifestly the phrase itself contains *two* factors, not one, and although both are found in section 12(k), they have elsewhere been used separately. An examination of the statute reveals that there could not have been a congressional intention, by combining the two factors, to dispense with every due process protection so meticulously preserved elsewhere in the Act.

Prior to the amendment of 1974, section 19(a) of Exchange Act, 48 Stat. 898 (June 6, 1934), 15 U.S.C. § 78s(a), commenced with the language (applicable to all of its subsections) "The Commission is authorized, if in its opinion such action is necessary or appropriate *for the protection of investors*—." Each of the first three subdivisions then authorized the Commission, in each case "After appropriate notice and opportunity for hearing," to enter orders (1) suspending for not more than twelve months or withdrawing the registration of a securities exchange; (2) sus-

[39] Brief, pp. 3, 4, 10, 11, 12, 13, 14, 20, 21 (3), 22, 23 (3), 25, 30, 32 (2), 37, 38.

pending for not more than twelve months or withdrawing the registration of the security of an issuer upon a finding of the issuer's violation of the Act or regulations thereunder; and (3) suspending for a period not exceeding twelve months, or expelling from membership in any securities exchange, any member or officer who the Commission finds has violated the Act or the regulations thereunder. Thus, each of the first three subdivisions of former section 19(a) required a hearing before action could be taken "for the protection of investors."

Subdivision (4) of former section 19(a)—one of the two predecessor provisions of the present section 12(k)—did not follow this pattern. The subdivision did not begin with the "after appropriate notice" language, nor did it confine the power to be exercised either to a suspension not to exceed twelve months or to a termination, revocation or expulsion, upon the finding of wrongdoing by the person or entity sanctioned. Instead, to the opening "protection of investors" language of section 19(a) applicable to all four subdivisions, subdivision (4) adds the following language:

> "And if in its opinion *the public interest so requires*, summarily to suspend trading in any security on any national securities exchange for a period not exceeding ten days, . . ."

Facially, as used in former section 19(a)(4), the term "the public interest" was equated with an emergency situation which, for a sharply limited duration, permitted remedial action in complete disregard for the due process protections routinely furnished to potential targets of Commission action.

The other predecessor provision of section 12(k), former section 15(c)(5) of the Act, 15 U.S.C. § 78*o*(c)(5), follows

this general format. Section 15 as a whole deals primarily with brokers and dealers. Subsections 15(c)(1) through (3) impose three prohibitions against broker-dealer conduct, in each case authorizing the Commission "by rules and regulations [to] define" the acts, practices, devices, and so forth, forbidden by the section, or to establish safeguards with respect to the broker's or dealer's financial responsibility. While these provisions themselves contain no sanctions, merely authorizing the adoption of rules of prospective application, they must be read together with section 15(b)(5)(D) and (E), 15 U.S.C. § 78*o*(b)(5)(D) and (E), which direct the SEC

> "after appropriate notice and opportunity for hearing, by order [to] censure, deny registration to, suspend for a period not exceeding twelve months, or revoke the registration of, any broker or dealer if it finds that such censure, denial, suspension, or revocation is in the public interest and that such broker or dealer . . . (D) has willfully violated any provision of . . . this chapter, or of any rule or regulation [thereunder; or] (E) has willfully aided, abetted, counseled, commanded, induced, or procured the violation by any other person . . . of this chapter, or of any rule or regulation [thereunder] . . ."

Here, in contrast to former section 19(a)(4), the sanctions are to be imposed "in the public interest", but only after notice and an opportunity for hearing.

Subdivision (5) of former section 15(c), provided that:

> "If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading, otherwise than on a national securities exchange, in any security . . . for a period not exceeding ten days."

The Government argues that under former sections 19(a)(4) and 15(c)(5) the Commission had the authority, requiring only a fresh "finding" that "the public interest and protection of investors" so require, to institute a second summary ten-day suspension of trading, to be followed, upon a similar "finding," by a third, or fourth or however many such suspensions are "found" to be necessary. Yet, another related provision negates this argument. Former section 15(b)(6), dealing with the registration of broker-dealers, is contrary to the Government's present claims from the standpoint of the manner in which it utilized the "public interest" and "protection of investors" language:

> "(6) Pending final determination whether any registration under this subsection shall be denied, the Commission may by order postpone the effective date of such registration for a period not to exceed fifteen days, but if, after appropriate notice and opportunity for hearing (which may consist solely of affidavits and oral arguments), it shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors to postpone the effective date of such registration until final determination, the Commission shall so order. Pending final determination whether any such registration shall be revoked, the Commission shall by order suspend such registration if, after appropriate notice and opportunity for hearing, such suspension shall appear to the Commission to be necessary or appropriate in the public interest or for the protection of investors. . . ."

Thus section 15(b)(6) allowed a single summary fifteen day postponement of registration, which could be followed by a longer postponement "after appropriate notice and opportunity for hearing", and a suspension of an existing

registration could be only after such notice and hearing.[49] The existence of this provision alone cuts sharply against the Government's reading of the related former sections 19(a)(4) and 15(c)(5) as allowing an indefinite number of consecutive summary suspensions of trading.

The two current suspension of trading provisions are found in section 12(j) and in section 12(k) of the Exchange Act, as amended in 1974, 15 U.S.C. § 78*l*(j), 78*l*(k), and carry forward the pre-existing dichotomy. Section 12(j) provides in pertinent part:

> "(j) The Commission is authorized by order, as it deems necessary or appropriate for the protection of investors, to deny, to suspend the effective date of, to suspend for a period not exceeding twelve months, or to revoke the registration of a security, if the Commission finds, on the record after notice and opportunity for hearing, that the issuer of such security has failed to comply with any provision of this chapter or the rules and regulations thereunder."

Section 22(k) provides in pertinent part:

> "(k) If in its opinion the public interest and the protection of investors so require, the Commission is authorized summarily to suspend trading in any security . . . for a period not exceeding ten days, . . ."

Thus, under section 12(j), in order to suspend a registration statement for a period not exceeding twelve months, or to revoke the registration of a security, it is necessary for the Commission to find, albeit on the record and after notice and an opportunity for a hearing, only that "the protection of investors" so requires. In contrast, under section 12(k), the Commission is authorized, without notice or opportunity for hearing, to suspend trading in a security for a period of not more than ten days, but solely upon the finding that both "the public interest *and* [the] protection of investors so require," (*N.B.* the use of the plural verb).

Since section 12(j), like former sections 19(a)(1) through (3), 15(c)(1) through (3) and 15(b)(4) and (6), requires a finding on the record and after notice and hearing that the "protection of investors" so requires in order to revoke, suspend or postpone registration, etc., for up to a year or permanently, as the case may be, to accept the Government's argument that the Commission is authorized by section 12(k) and its predecessor provisions to enter successive summary suspensions—which may and frequently do exceed one year's duration—without notice or a hearing, and solely upon an *in camera* determination (if any is really ever made) that the "public interest and protection of investors" so requires, would mean that "the public interest" finding (required under section 12(k) but not in terms required under section 12(j)) alone authorizes back-to-back suspensions of trading without notice or hearing, for indefinite periods.

Apart from the fact that this reading of the two statutes puts an undue stress upon the phrase "the public interest," and utilizes it in a manner which makes a rote "finding" of such "public interest" functionally superior to the finding of the need for investor protection made after notice and hearing, the construction effectively repeals any necessity for section 12(j), and the Government concedes that the power it gives the Commission is rarely if ever used

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[49] The 1975 amendment of section 15(b)(6) eliminated the fifteen day summary postponement, but restricted the Commission in both of its powers—to suspend a registration, or to revoke it—in each case only after notice and hearing. P.L. 94-29, § 11(2), 89 Stat. 121 (June 4, 1975).

(Brief, pp. 33-43, nt. 14) The Government's reading of the statute thus is inconsistent with the other provisions of the Act surrounding it, and should be rejected.

(b) Since the statute itself provides no guidelines, the statutory phrases "public interest" and "protection of investors" are unconstitutionally too broad a grant of authority for punitive or "remedial" action

These two phrases, "the public interest" and "the protection of investors" are too general and evanescent a grant of legislative power when used to authorize the Commission to act informally to discipline or to "remedy" situations which may be beyond the control of an issuer, and to do so upon a record consisting of nothing more than the incantation of the statutory language. As it has been used, it is the power to do anything at all.

In the Court below (Answering Brief, pp. 30-32), the Commission argued that the standards are not too broad:

> "The standards prescribed by Section 12(k) are adequate to guide the Commission in the exercise of its administrative discretion. [*Lichter* v. *United States*, 334 U.S. 742, 785 (1948)]. That provision requires that the action of the Commission be taken only in situations where such action is necessary or appropriate for the protection of investors *and* if the public interest so requires. Each of these two standards, 'public interest' and 'protection of investors,' has been held adequate by the courts to satisfy the constitutional requirements. In *Wright* v. *Securities and Exchange Commission*, 112 F.2d 89, 94-95 (C.A. 2, 1940), this Court held that the 'protection of investors,' standard in Section 19 of the Securities Exchange Act was a sufficiently definite criterion to guide the Commission in the exercise of its administrative authority.

Similarly, in *American Sumatra Tobacco Corp.* v. *Securities and Exchange Commission*, 110 F.2d 117, 121 (C.A. D.C., 1940), it was held that the 'public interest' standard in Section 24(b) of the Securities Exchange Act was 'a sufficient guide,' in the light of the 'main purpose of the Act * * * to insure the maintenance of fair and honest markets in transactions in securities on national exchanges,' and, accordingly, that no unconstitutional delegation of authority was involved.

"The Supreme Court has repeatedly held that summary administrative action affecting property interests will be sustained in extraordinary situations where some valid governmental interest is at stake. *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663 (1974) (summary seizure of pleasure yacht); *Board of Regents of State Colleges* v. *Roth*, 408 U.S. 564 (1972) (nonretention of state university teacher); *Fuentes* v. *Shevin*, 407 U.S. 67 (1972) (statute permiting summary replevin by private person); *Fahey* v. *Mallonee*, 332 U.S. 245 (1947) (appointment of savings and loan association conservator); *Ewing* v. *Mytinger & Casselberry, Inc.*, 339 U.S. 594 (1950) (multiple seizures of misbranded drugs); *Bowles* v. *Willingham*, 321 U.S. 503 (1944) (Emergency Price Control Act provision authorizing rent ceilings); *Phillips* v. *Commissioner*, 283 U.S. 589 (1931) (tax deficiency judgments without prior hearing on liability). Cf. *Bell* v. *Burson*, 402 U.S. 535 (1971) (summary suspension of vehicle registration and driver's license); *Bi-Metallic Investment Co.* v. *State Board*, 239 U.S. 441 (1915) (State ordered increase in property valuations). This Court has also had occasion to apply this doctrine sustaining summary administrative action in the public interest. *Pordum* v. *Board of Regents of State of New York*, 491 F.2d 1281, 1284-1285 (C.A. 2, 1974)

(Commissioner of Education; summary suspension of teacher upheld)." (Footnotes omitted).

In fact the decisions cited by the Commission below do not support its conclusions. Apart from emergencies, they sustain one or more of the following principles:

(a) A congressional grant of authority to an administrative agency—*to enact regulations* filling in the interstices of the prescribed statutory format or defining acts to be unlawful in accordance with such format, "in the public interest or for the protection of" a described class of person—is not an unconstitutional delegation of legislative power. Cf., *Ernst & Ernst* v. *Hochfelder, supra,* 425 U.S. 185, 199-201 (1976). In *Hochfelder* the Court held, *id.*, at 212-13:

> "The rulemaking power granted to an administrative agency charged with the administration of a federal statute is not the power to make law. Rather, it is '"the power to adopt regulations to carry into effect the will of Congress as expressed by the statute. . . ."' Thus, despite the broad view of the Rule advanced by the Commission in this case, its scope cannot exceed the power granted the Commission by § 10(b)."

(b) A congressional grant of authority to an administrative agency to take remedial or quasi-judicial action "in the public interest or for the protection of" a described class of person—*in accordance with explicit statutory prohibitions* or directions or *in accordance with regulations so adopted*—is not an unconstitutional grant of power. *E.g. Phillips* v. *Commissioner, supra,* 283 U.S. 589, 596-97 (1931); *Fahey* v. *Mallonee,* 332 U.S. 245, 250-53 (1947).

(c) A congressional grant of authority to an administrative agency *to make technical economic or similar judg-*

ments based upon an administrative expertise, "in the public interest or for the protection of" a described class of person—in accordance with the legislatively mandated statutory purpose—is not an unconstitutional grant of power. *E.g., Bowles* v. *Willingham, supra,* 321 U.S. 503, 514-16 (1944); *Lichter* v. *United States, supra,* 334 U.S. 742 (1948); *New York Central Securities Corp.* v. *United States,* 287 U.S. 12, 22-23 (1932).

However none of the cases cited by the Commission below supports a grant of power to an administrative agency to take remedial or quasi-judicial action, ostensibly "in the public interest or for the protection of" a described class of person, where no statutory guidelines are provided and there are no regulations defining under what circumstances the agency will act or refuse to act. Manifestly such grant of authority, or at least the Commission's supererogation of such authority if not granted, results in an unconstitutional delegation of power, which the Commission (or its Staff) can and has used both irrationally and arbitrarily, if not vindictively. The cases do not support such a grant.

The two Court of Appeals decisions cited by the Commission below certainly do not support any such power. *Wright* v. *SEC, supra,* 112 F.2d 89 (2d Cir. 1940), is presumably cited because it in terms sustained a grant of power to be exercised for "the protection of investors"—the power to expel a member of a securities exchange under section 19(a)(3). However, apart from the fact that the expulsion had been ordered after the full hearing mandated by section 19(a)(3), upon evidence which the Court of Appeals found sufficient as to one substantive charge of manipulation (but not as to another, for which reason the Court remanded for a reconsideration of the administrative sanction), the cited decision was narrowly drawn.

On the issue of the allegedly unconstitutional grant of authority to the Commission, the Second Circuit said, 112 F.2d at 94-95:

> "It is urged that section 19(a)(3) is an unlawful delegation of legislative power to an administrative agency because the statute declares no standards to guide the Commission in determining whether suspension or expulsion is necessary or appropriate for the protection of investors. We cannot accept that argument. Congress has defined the conduct that is unlawful and has left to the administrative agency, subject to judicial review, discretion to determine whether protection of investors requires that one who has been found guilty of unlawful conduct on a national securities exchange should be temporarily or permanently excluded from carrying on activities as a member of such an exchange. The 'protection of investors' is a sufficiently definite criterion to guide the Commission. See New York Central Securities Corp. v. United States, 287 U.S. 12, 24, 53 S.Ct. 45, 77 L.Ed. 138. Numerous cases are persuasive that the delegation to an administrative agency of discretion as to revocation of a license is not unconstitutional. . . . We think the principle of these cases is equally applicable, even though the Commission is unauthorized to admit to membership in a national securities exchange."

Similarly, *American Sumatra Tobacco Corp.* v. *SEC*, 110 F.2d 117 (App.D.C. 1940), is presumably cited because it sustained a grant of authority to the Commission to act for "the protection of investors". The precise issue in *American Sumatra* was whether the Commission could properly require the public disclosure of plaintiff's gross sales and cost of goods sold, where confidential treatment had been requested—despite the Commission's general rules requiring such disclosure—because of the alleged risk of adverse economic effects at the hands of plaintiff's customers. The requested waiver of its rules was refused by the Commission after extensive hearings.

Affirming the Commission's decision requiring disclosure because there was little risk of customer boycott, the Court said, 110 F.2d at 120, that "if the conclusion reached [by the Commission] is as likely to be correct as incorrect, it is our duty to let it stand." The Court then explained its *ratio decidendi*, *id.*, at 120-21:

> "But the question is primarily not for us but for the Commission, and Congress has unquestionably intended that the Commission should bring to bear upon the decision of this and like questions, what has been called in cases within the jurisdiction of the Interstate Commerce Commission, the knowledge and experience of experts. This does not by any means set up an inquisition destructive of the rights of the individual. The delegated power is not to be exercised arbitrarily or to be considered an unfettered discretion over the property of the citizen. Its exercise is subject to review. But so long as the Commission's decision rests on substantial evidence and on inferences which are not arbitrary and capricious, it should be sustained. In the discharge by Congress of a dominant trust for the benefit of the public, the possibility of incidental loss to the individual is sometimes unavoidable.
>
> "In this case the Commission has not justified its position on the ground of a general rule or a general policy. If it had, the case would have been different and would have demanded different treatment. The decision is placed on a fairer and broader ground.

And, considered in that aspect and with due regard to all of petitioner's relevant evidence, which given its fullest significance still leaves the question in the realm of doubt and speculation, we do not feel justified in declaring the action of the Commission subject to correction.

"This leaves for consideration petitioner's second point, that Section 24(b) of the Act delegates power without setting any standard for the Commission's action. Petitioner says the words 'public interest' are too general to be a proper safeguard, but we think this point is without merit. The main purpose of the Act is to insure the maintenance of fair and honest markets in transactions in securities on national exchanges. The Act requires the issuer of securities—the registrant—to make disclosures in order to forestall unfair practices in the sale of securities and for the protection of investors. The 'public interest' in this respect is just as definite as the 'public interest' in transportation facilities. Powers of the Interstate Commerce Commission to make decisions, confined only by the latter standard, have been continually upheld. . . . Considered in the light of the opinions in these cases, we think the Act provides a sufficient guide for administrative action whenever the Commission is called upon to decide whether or not disclosure is in the public interest."

As to the power to enter summary suspension(s) of trading, the Exchange Act provides no corresponding statutory guidelines or indicia as to what particular circumstances may warrant the imposition either of initial or consecutive summary suspensions, and the Commission has adopted no published guidelines or regulations which will alert issuers and the investing public as to what factors

will guide its putative discretion in deciding whether or not to impose such suspensions. As the Government has been at pains to note (Brief, pp. 30-31), the summary power under present section 12(k) does not require any showing of *issuer misconduct*, in contrast to the longer suspension power under section 12(j), yet it is issuers and their shareholders who are potentially adversely affected by consecutive suspensions lasting a longer period. *Cf.*, Brief, p. 13 ¶ D.

Moreover, since the Commission's Brief also makes clear that in cases of third-person misconduct which may affect the fairness of the market price for an issuer's security, a public release by the Commission may be sufficient protection of the investing public (*e.g.*, *id.*, pp. 5, 15),[41] the question is why, instead of entering endless successive suspensions not statutorily authorized, the Commission does not simply make suitable disclosures to alert the investing public as to the potential dangers, and permit trading to resume at the end of an initial suspension of trading.

The summary suspension power given to the Commission by the Congress was manifestly intended as an emergency stop-gap. This Court's decisions sustaining congressional grants of authority to administrative agencies to act within

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[41] At pages 4-5, the Government explains the lifting of the second series of suspensions of trading in Javelin's securities by saying that it filed a "wash trading" complaint against certain individuals believed to be manipulating Javelin's stock, adding, *id.*, p. 5, that "Once the public had an opportunity to become familiar with these allegations, the Commission permitted trading in CJL stock to resume." In footnote 2 it adds that "The Commission's action is still pending in the district court," thus demonstrating that in its view the protection of investors is accomplished if the Commission merely makes public the fact of yet-to-be proved allegations of wrongdoing. In December 1977, twenty months after the action was brought, the defendants therein named consented to an injunction without admitting or denying the allegations of the complaint. *But see, ante*, p. 24, nt. 20.

a statutory framework, *e.g., Lichter* v. *United States,* 334 U.S. 742, 784-85 (1948), simply cannot be stretched to cover the Commission's present claims on behalf of section 12(k), particularly given the capricious manner in which it has utilized the supposed authority. As this Court said in *Bell* v. *Burson,* 402 U.S. 535, 539 (1971), "A procedural rule that may satisfy due process in one context may not necessarily satisfy procedural due process in every case." And, as the Court of Appeals said in *American Sumatra Tobacco Corp.* v. *SEC, supra,* 110 F.2d 117, 120-21 (App.D.C. 1940):

> "The delegated power is not to be exercised arbitrarily or to be considered an unfettered discretion over the property of the citizen. Its exercise is subject to review. But so long as the Commission's decision rests on substantial evidence and on inferences which are not arbitrary and capricious, it should be sustained."

The fact that "public interest" is not too vague a reference to justify the Commission's requiring disclosure of cost of goods sold, *American Sumatra, supra, loc.cit.,* and "protection of investors" was sustained as not overly broad in allowing it to expel a broker from exchange membership, *Wright* v. *SEC, supra,* in each case after notice and hearing, cannot control here. No standards are provided.

(c) The Commission's application of its summary suspension power and the related power to extend filing deadlines is arbitrary and irrational

As our analysis of the Commission's summary suspensions demonstrates (*ante*, pp. 41-46), the Commission now regularly enters summary suspensions upon an issuer's failure to file a timely periodic report under section 13(a) of the Act, 15 U.S.C. § 78m(a), which requires issuers to file reports "in accordance with such rules and regulations as the Commission may prescribe as necessary or appropriate for the proper protection of investors and to insure fair dealing in the security." It is not without relevance to the issues in this proceeding to see how the Commission has utilized these provisions and construed the statutory language in connection with Javelin itself.

Either under section 13(a) or under the authority of section 12(b)(1), 15 U.S.C. § 78*l*(b)(1),[42] the Commission adopted Rule 12b-25, 17 CFR § 240.12b-25, allowing issuers to apply for extensions of time in filing. In pertinent part subdivision (a) and the prefatory note provide as follows:

> "*Rule 12b-25. Extension of Time for Furnishing Information.*
>
> "NOTE: The disclosures required in reports filed with the Commission are essential to the preservation of free, fair and informed securities markets. It is of critical importance that such reports be furnished within the time they are required to be filed under the Commission's rules. Only the most compelling and unexpected circumstances justify a delay in the filing of a report and the dissemination to the public of the factual information called for therein.
>
> "(a) If any required information, document or report . . . cannot, without unreasonable effort or expense be furnished within the time it is required to be filed, the registrant shall, as soon as possible, but no later than the last day of the specified period, file with the Commission, an application on Form 12b-25 for an

[42] Section 12(b)(1) permits registration of a security on a national securities exchange by the issuer's filing an application containing "Such information . . . as the Commission may by rules and regulations require, as necessary or appropriate in the public interest or for the protection of investors . . ." Section 13(a)(1) requires such documents to be kept current in accordance with the quoted language of section 13.

> extension of time of not more than 30 days furnishing the information called for by all items of the Form. One additional extension of not more than 30 days also may be applied for in the same manner as the initial application.

Subdivision (b) of the Rule states that the extension(s) prescribed in subdivision (a) are deemed granted unless denied within fifteen days. Subdivision (c) permits a request for further extensions (beyond the two contemplated by subdivision (a)), but these are deemed denied unless granted within fifteen days. The remaining subdivisions are not pertinent to this discussion.

Both the Government's Brief and the present *amicus* brief have mentioned some of the extraordinary events which occurred to Javelin in 1976. Since these bear upon the point we are here making, we briefly recapitulate these events.[43]

On March 6, 1976, a group of six Javelin directors seized control of its management, and one of their number made a number of serious accusations of wrongdoing against former management which the incumbents determined to investigate through counsel and by a reaudit. Through counsel they so advised the Enforcement Division in late March 1976, informing its members that the Form 10-K for 1975 due on March 30, 1976, would not be timely filed as a result. No formal request under Rule 12b-25 was made by the then incumbents or in their behalf. At the time of the discussion with the Enforcement Division Javelin was not in default of any current filing obligation.

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[43] Although matters dehors the Record are considered, it is not those matters but the Commission's reading of its rules, which is not subject to dispute, which is pertinent to the present discussion.

By the time the interim management was ousted on July 30, 1976, Javelin was delinquent in filing its 1975 Form 10-K and its Form 10-Q for the first quarter of 1976. It became delinquent in filing a second Form 10-Q in mid-August 1976. On November 8, 1976 the Commission filed a complaint for injunction on account of these delinquencies, invoking also prior (cured) delinquencies dating from 1971 to 1974. In mid-November 1976, a third Form 10-Q became delinquent. On or about December 1, 1976, Javelin filed its audited financial statements for 1975, thereby completing the filing of its Form 10-K for 1975. On or about December 9, 1976 its auditor purported to withdraw his certification as a result of pressures applied by the Assistant Director of Enforcement on Javelin's Special Compliance Counsel, who induced Javelin's auditors to speak to American auditors. Javelin's auditors thereupon also resigned as auditors.

During December, the Commission's Division of Corporation Finance declined comment or a waiver with respect to Javelin's proxy materials (because of its inability to supply two years "certified" financial statements), stating that the matter was in the hands of Enforcement. This required Javelin to postpone its annual meeting of shareholders into 1977, resulting in a violation of Canadian law which may have induced the Canadian Minister of Consumer and Corporate Affairs to commence his own investigation in Ottawa.

On February 14, 1976 the Commission amended its complaint to charge Javelin with having filed false and misleading periodic reports, the allegations of falsity largely bearing upon accounting treatments and principles.

Shortly before the due date of the 1976 Form 10-K on March 31, 1977, Javelin formally requested the Commis-

sion's Division of Corporation Finance to extend its time to file the 1976 Form 10-K for thirty days, pursuant to Rule 12b-25, assigning as reasons the change of auditors and other events (including the necessity for its new auditors to evaluate the allegations made in the Commission's amended complaint), and because the former interim management, while in power, had placed its members in control of a significant corporate subsidiary, Bison Petroleum & Minerals Limited ("Bison"), remaining in control of Bison notwithstanding their ouster from Javelin's management and refusing to supply Javelin with current information about Bison's operations so that Javelin was prevented from consolidating Bison's financial reports with its own as required by the Commission's rules.

One would have assumed that this catalogue of disasters, which greatly hampered the preparation of audited financial statements by newly-retained auditors, would have qualified Javelin for the thirty-day extension which it requested. Although Rule 12b-25 itself articulates no standards for the Commission's exercise of its power to extend filing dates, the Commission has explained such standards at page 7 of the brief it filed in the District Court for the District of Columbia in support of its motion for summary judgment in *SEC* v. *Investors Funding Corp. of New York*, D.D.C. Civil Action No. 840-73, *mandamus denied sub nom., Investors Funding Corp.* v. *Jones*, 161 U.S.App.D.C. 420, 495 F.2d 1000 (App.D.C. 1974), in which it stated that Rule 12b-25 was:

> "... designed to balance the public's interest in prompt reports with the fact that reporting companies must be afforded an adequate opportunity to prepare reports containing requisite financial and other material information. In order to alleviate the hardship that might occur on rare occasions if the time deadlines

> for filing periodic reports were absolute, the Commission has established an administrative procedure by which reporting companies may request limited, specified extensions of time in which to file their periodic reports. See Securities Exchange Act Rule 12b-25, 17 CFR 240.12b-25."

Notwithstanding the unprecedented upheavals in Javelin's management which were well known to the Commission; despite the Commission's own recent allegations of accounting improprieties which had occurred under predecessor accountants, necessitating detailed examination and consideration by Javelin's newly-retained auditors; and ignoring the problems of a hostile Bison management (of which the Commission had knowledge because of the auditors' qualification of their report in part because of such hostility)—all of which would seem to fit comfortably within the tests articulated by the Commission in its *Investor Funding* brief, *supra*—the Commission's Staff denied the extension request. Some six months later (months after the Form 10-K was actually filed), the Commission itself rubber-stamped its Staff's decision, invoking the identical grounds. The sole effect of such denial (a petition for review of which is now pending in the United States Court of Appeals for the District of Columbia Circuit, *Canadian Javelin Limited* v. *SEC*, Dkt. 77-1897), was to render Javelin in "violation" of the reporting requirements.[44]

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[44] The record on the petition for review from this denial, consisting of internal memoranda, including one from the Division of Enforcement to the Division of Corporation Finance is wholly expurgated, in accordance with the Commission's regular practice, so that it is impossible to know what facts *the Commission* purported to have considered, or what responses were made to Javelin's claim that the Staff misinterpreted its Rule in originally denying the request.

What is significant here is that one of the primary reasons assigned both by the Staff and later by the Commission itself for denying Javelin's manifestly warranted request for a thirty-day extension, was that:

> "3. Reasons stated in the application fail to indicate that the granting of the request is appropriate in the public interest or for the protection of investors."[45]

As our quotations from sections 13 and 12 themselves demonstrate, the language "in the public interest and for the protection of investors" (or some variant thereof) is used in the statute only to define the purpose and scope of the rules and regulations which the Commission is authorized to adopt. Presumably acting "in the public interest and for the protection of investors" the Commission did adopt Rule 12b-25, and Javelin *prima facie* showed that it was laboring under a "hardship that might occur on rare occasions if the time deadlines for filing periodic reports were absolute," thus warranting favorable consideration of its request under that Rule, as explained in *Investors Funding, supra.*

Manifestly, to require an issuer to make an affirmative demonstration that the requested delay in filing will, in and of itself, affirmatively advance the public interest and the protection of investors, is to require the impossible. Given the statutory policy of full disclosure of material corporate facts and finances, it could never be the case that a delay in furnishing such information is in the public

[45] Other reasons given were Javelin's prior latenesses (1971 to 1974): the fact that the Commission had filed a complaint charging violations of sections 13(a) and 10(b), and the fact that no assurance had been given that the report would be filed within the time requested, and that the requisite information was not elsewhere available. The former ground suggests a punitive or vindictive element irrelevant to the purpose of the Rule. The latter ground can rarely if ever be satisfied.

interest or protects investors, regardless of the reason or justification for the delay, which may be substantial. In short this reason for denial of the request is merely a captious way of attempting to justify a purely arbitrary or vindictive act.

This, we submit, is characteristic of the perverted reading of the statutory language regularly given it by the Commission. We stress that the language invoked in denying Javelin's extension request is *verbatim* the language involved in the present proceedings. Thus the Commission hides behind the phrase "public interest" when it wishes to avoid action, as on the extension request, and uses it as a sword when supererogating to itself a power never granted by Congress, as in summarily suspending trading over a long period. The proceedings in the Court of Appeals thus demonstrate that, as used by the Commission, the language in suit is meaningless, and the arguments advanced in this Court in its behalf are a mockery of the principles the Commission invokes.

Thus by its reading of its statutes the Commission's Staff can arbitrarily grant or deny extensions without having to explain itself, and this arbitrariness itself is a denial of due process of law. Unlike *Bowles* v. *Willingham*, 321 U.S. 503, 514 (1944), it is not possible to argue with respect to the Commission's open-ended utilization of the "public interest" and "protection of investors" language that

> "There is no grant of unbridled administrative discretion as appellee argues. Congress has not told the Administrator to fix rents whenever and wherever he might like and at whatever levels he pleases."

Nor, as in *American Sumatra Tobacco Corp.* v. *SEC, supra*, 110 F.2d at 120 (App.D.C. 1940), is it possible to say that "the Commission's decision rests on substantial evidence and on inferences which are not arbitrary and capricious."

Both in its entry of summary suspensions of trading and in its withholding of relief under Rule 12b-25 the Commission has demonstrated beyond cavil that it is capable of invoking the statutory language "public interest" and "protection of investors" to justify a decision reached by the Enforcement Division on undisclosed grounds, so long as that decision appears to consult the statutory requirements and to advance the statutory policy.

The Commission has regularly invoked the putative "public interest" and the ephemeral "protection of investors" as a smokescreen to mask its own violations of its governing statutes. The Court below correctly held that the talismanic invocation of the statutory language does not warrant or justify the Commission's disregard of statutory limitations upon its powers. Its decision should be affirmed.

CONCLUSION

The Present Controversy Is Not Moot. The Commission's Regular Resort To Consecutive Summary Suspensions Of Trading, Upon Putative "Findings" That The "Public Interest And Protection Of Investors" Requires It, Is Unauthorized By The Exchange Act And Improper, And The Court Should Affirm The Decision Below, Including The Direction To The Commission To Discontinue Its Unlawful Practice.

Respectfully submitted,

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APPENDIX

Appendix

Chronological Reorganization of App. 183-211

Year 1959

Company	Susp. Commenced	Susp. Term.	Duration
Jacobs, FLCo	2/11/59	12/17/59	1

Year 1961

Company	Susp. Commenced	Susp. Term.	Duration
Apex Mineral	5/11/61	9/2/62	48

Year 1962

Company	Susp. Commenced	Susp. Term.	Duration
Indus.Ent.	3/5/62	10/30/62	24
Auto.Proced.	3/16/62	9/11/62	18
PrecisionMic	4/4/62	12/19/62	26
Black Bear	4/19/62	12/19/62	24
Bruce, E.L.	6/13/62	11/18/62	16
Prosper Oil	9/21/62	12/19/62	9
Atl.Research	10/10/62	11/15/62	4

Year 1963

Company	Susp. Commenced	Susp. Term.	Duration
Cont.Vending	3/8/63	6/2/76†	484
TasteeFreez	9/16/63	12/21/64	10

Year 1964

Company	Susp. Commenced	Susp. Term.	Duration
Fotochrome	10/9/64	10/29/64	2

Year 1965

Company	Susp. Commenced	Susp. Term.	Duration
Empire Petr.	4/1/65	4/5/65	1
Belock Instr	6/22/65	11/8/65	15
Idamont Oil	6/23/65	7/26/65	3
VTR, Inc.	8/30/65	5/30/66	27
PinalCty.Ass	11/1/65	6/1/67	58
Bristol Dyn.	12/23/65	1/24/65	3
Noramco,Inc.	12/23/65	1/24/66	3
Fotochrome	12/23/65	1/21/66	3
Marrud, Inc.	12/28/65	1/16/66	2

Appendix

Year 1966

Company	Susp. Commenced	Susp. Term.	Duration
Assoc.Oil&G.	1/19/66	2/9/66	2
Grt.Am.Indus	3/31/66	4/14/66	2
Gilbert Co.	4/11/66	4/30/66	2
Elktron Co.	4/18/66	7/6/66	8
Grt.Am.Indus	4/29/66	10/23/66	18
Linc.Print'g	8/1/66	7/11/67	35
1st Std Corp	9/19/66	10/24/66	4
Sports Arena	12/7/66	6/17/67	19
Vitro Corp	12/11/66	12/11/66	1
Pakco Co.'s	12/20/66	12/21/67	37

Year 1967

Company	Susp. Commenced	Susp. Term.	Duration
Crescent Crp	1/6/67	1/8/67	1
Rand DevCorp	1/20/67	5/28/67	13
Electro-Nucl	3/22/67	4/25/67	4
Am.Steel/Pmp	4/21/67	6/2/67	4
Nor.Instrum.	4/22/67	8/11/67	11
Nylo-Thane	4/28/67	5/27/67	3
Steel Crest	5/12/67	10/4/67	15
S&P Nat'lCrp	5/12/67	9/4/67	12
Am.Plan Corp	5/16/67	6/6/67	2
Interam.Ind.	5/19/67	2/2/68	26
J.J.Newberry	5/24/67	5/25/74	1
Subscrip.TV	5/26/67	10/24/67	15
Jade Oil&Gas	6/9/67	8/2/67	5
Chemalloy	6/22/67	7/2/67	1
GoldfieldCrp	6/22/67	7/2/67	1
N.Am.Res.&Dv	7/20/67	3/30/68	26
Tel-A-Sign	7/26/67	9/19/67	6
PenroseIndus	7/28/67	12/31/67	16
Roto-Americ.	8/10/67	4/14/68	25
Coditron Crp	8/14/67	4/16/68	25
Dyna Ray Crp	8/17/67	10/14/67	6
Jodmar Indus	9/11/67	11/15/67	7
Fastline Inc	11/9/67	7/19/68	25
Silv.Shield	11/27/67	12/27/67	3
Nylo-Thane	12/8/67	12/12/67	1
Leeds Shoes	12/12/67	9/23/68	8
Rover Shoe	12/13/67	10/1/68	29
Rietz Indus	12/22/67	12/31/69	1

Appendix

Year 1968

Company	Susp. Commenced	Susp. Term.	Duration
Kashmir Oil	1/11/68	3/23/68	7
Santa Fe Int	1/15/68	3/30/68	8
Med.Electro.	1/19/68	1/26/68	1
Berlin Doman	1/25/68	1/29/68	1
Brilund Mine	1/25/68	1/29/68	1
InglewoodGas	1/26/68	2/14/68	2
Mesur-matic	1/26/68	2/4/68	1
HamiltonLIns	2/2/68	2/11/68	1
Cormac Chem.	2/7/68	6/29/68	14
Alscope Cons	2/19/68	9/2/68	20
Cameo-Pkway	2/23/68	9/14/68	20
Alcar Instr.	3/28/68	10/23/68	21
Alsco, Inc.	4/5/68	4/8/68	1
MeterMaidInd	4/12/68	4/18/68	1
Am.Checkmastr	4/22/68	8/4/68	8
GoldenAgeMin	5/6/68	10/2/68	15
Nat.Sweepstk	5/3/68	8/5/68	9
ParamountGen	6/7/68	11/9/68	16
RoystonCoali	6/10/68	10/10/68	12
NaglerHelico	6/16/68	6/28/68	1
KennebecCon.	6/26/68	8/4/68	4
Planet Oil	6/28/68	7/17/68	2
B.S.F. Co.	7/19/68	9/1/69	41
Comstk-Keyst	7/22/68	10/6/68	5
Alsco, Inc.	7/31/68	8/14/68	2
Mastercraft	8/15/68	9/21/68	4
Mtn.Sts.Dev.	8/28/68	4/28/69	24
Stanwood Oil	9/6/68	11/14/68	4
Top Notch	10/15/68	6/11/69	3
MooneyAircrf	10/18/68	3/16/69	15
Gale Industr	10/25/68	11/10/69	2
Dumont Corp	11/1/68	4/19/69	17
Texas Uran.	11/5/68	5/13/69	20
MajesticCap.	11/21/68	5/6/69	17
Comstk-Keyst	12/17/68	5/4/69	14
Electrogen	12/18/68	6/15/69	18
OmegaEquitie	12/20/68	4/28/69	13

Appendix

Year 1969

Company	Susp. Commenced	Susp. Term.	Duration
Capitol Hold	1/15/69	10/31/69	29
CrestIn.Uran	1/27/69	4/23/69	9
NorsulOil&Mg	1/27/69	2/25/69	1
Telstar, Inc	2/4/69	10/1/69	24
Mill Factors	2/12/69	3/9/69	3
Bartep Indus	2/19/69	7/18/69	15
Microbiologi	2/20/69	3/9/69	2
Comm.Fin.NJ	3/12/69	12/6/69	27
PhotoMarkCom	4/10/69	6/28/69	8
GulfAerospac	4/21/69	5/3/69	1
Tintair, Inc	4/28/69	5/7/69	1
Parvin/Dohrm	5/6/69	5/11/69	1
Cont.Inv.Crp	5/7/69	6/11/69	4
Fed.Oil Co.	5/20/69	6/18/69	3
Fed.Oil Co.	6/19/69	10/16/69	12
Rajac Indus	6/26/69	1/21/70	21
Hoe, R&Co.	7/2/69	7/11/69	1
Lib.Equities	7/28/69	12/4/69	13
CmwlthUnited	8/1/69	12/20/69	13
Fed.Purch.	8/6/69	10/5/69	6
Pac.Fid.Corp	8/18/69	12/5/69	11
LiquidOptics	9/18/69	1/15/70	12
Jonker Corp	9/29/69	10/8/69	1
Glas-FoamCrp	10/7/69	10/16/69	1
Geonics,Inc	10/21/69	10/30/69	1
Ocean Data	10/21/69	10/30/69	1
Oretek, Inc.	10/21/69	10/30/69	1
Space Data	10/21/69	10/30/69	1
Gray LineCrp	11/7/69	11/16/69	1
Ark.Val.Ind.	11/10/69	11/19/69	1
Prof.Health	11/13/69	11/22/69	1
Transceiver	11/17/69	11/26/69	1
Rev.Props.Co	11/19/69	12/9/69	2
Concepts & H	12/4/69	12/13/69	1
ControlMetal	12/4/69	12/13/69	1
Equity Group	12/4/69	12/13/69	1
Montana West	12/4/69	12/13/69	1
Vodel Corp	12/4/69	12/13/69	1
Cont.Dynamic	12/9/69	12/18/69	1
Falcon Speed	12/9/69	12/18/69	1

Appendix

Year 1969

Company	Susp. Commenced	Susp. Term.	Duration
Halbern Ind	12/9/69	12/18/69	1
Met Sports	12/9/69	12/18/69	1
MonarchElec.	12/9/69	12/18/69	1
Les StudsCo	12/11/69	12/20/69	1
Alaska Intl.	12/17/69	12/26/69	1
Consol.Smelt	12/22/69	12/31/69	1
ElevenProd.	12/22/69	12/31/69	1
MitchelleEnt	12/22/69	12/31/69	1
Trans-PacDev	12/22/69	12/31/69	1
Trans-PacEnt	12/22/69	12/31/69	1
Std.Computer	12/24/69	1/2/70	1

Year 1970

Company	Susp. Commenced	Susp. Term.	Duration
Carbon, Inc.	1/12/70	1/21/70	1
NaturizerInc	1/12/70	1/21/70	1
Plant Indus.	1/30/70	2/4/70	1
JB&T Co.	2/9/70	2/18/70	1
S&M Indus.	2/9/70	2/18/70	1
Imp.Inv.Corp	2/10/70	2/19/70	1
Chill-CanInd.	2/12/70	2/21/70	1
Drexel Indus	3/17/70	3/26/70	1
Transco Ind	3/17/70	3/26/70	1
Select Entrp	4/2/70	4/11/70	1
Permaspray	4/17/70	4/26/70	1
4 SeasnsNCen	5/13/70	5/24/70	2
Consol.Oil&G	5/18/70	6/9/70	3
Int.Scan.Dev	6/15/70	6/24/70	1
Health Eval.	6/25/70	7/4/70	1
Frasure Hull	7/1/70	7/10/70	1
Computraonic	7/6/70	7/15/70	1
Spokane Natl	8/21/70	8/30/70	1
Otis Oil&Gas	10/15/70	10/24/70	1
Picture Isl.	10/23/70	12/4/70	4
AART Comm.	10/30/70	11/8/70	1
Globus Int'l	11/9/70	11/28/70	2

Appendix

Year 1971

Company	Susp. Commenced	Susp. Term.	Duration
Am.Env.Contr	2/19/71	2/28/71	1
Rolls-Royce	3/10/71	3/19/71	1
Can.Javelin	3/17/71	4/5/71	1
L.I.Plastics	3/23/71	4/1/71	1
Spectrum Ltd	3/31/71	4/9/71	1
Crown Drug	4/2/71	4/11/71	1
Broker.Data	4/19/71	4/28/71	1
SatelliteSys	5/6/71	5/15/71	1
Philpot R.D.	5/19/71	5/18/71	1
Ecol.SciCorp	5/25/71	8/6/71	2
Indus.MfgCo	5/25/71	6/3/71	1
FAS Int'l.	5/27/71	11/22/71	18
LaddMtnMin'g	5/27/71	6/5/71	1
Am.Raceways	6/2/71	6/11/71	1
Pied Piper	6/22/71	7/2/71	1
Med.Inv.Corp	6/23/71	7/2/71	1
Dal Petrol.	6/29/71	7/9/71	1
Comp.Statist	7/8/71	7/17/71	1
Reclama.Sys.	7/8/71	7/27/71	1
Barr Finan.	7/13/71	7/22/71	1
E.&Pac.Indus	7/13/71	7/22/71	1
Hotei, Inc	7/13/71	7/22/71	1
Tilco, Inc.	7/30/71	8/9/71	1
Acme Missile	8/3/71	8/12/71	1
Camera Corp.	8/3/71	8/12/71	1
Cont.Dynamic	8/3/71	8/12/71	1
MSI Corp.	8/3/71	8/12/71	1
Ecol.SciCorp	8/17/71	12/18/72	68
Nat.TapeCorp	8/31/71	9/9/71	1
Telstar, Inc	9/24/71	10/3/71	1
N.Am.Resourc	9/30/71	10/9/71	1
Leisure Liv'g	10/12/71	11/1/71	2
MonarchGen'l	11/2/71	2/19/73	48
Coatings	12/7/71	3/25/72	11

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Year 1972

Company	Susp. Commenced	Susp. Term.	Duration
Dextra Corp.	1/21/72	2/6/72	2
Applied Dev.	2/3/72	6/1/72	12
Radia.Svc.As	2/16/72	7/29/73	53
Datamedia	2/28/72	3/8/72	1
Can.Javelin	3/7/72	8/8/72	16
Pyramid Comm	3/16/72	3/25/72	1
1st Fidel.Co	3/27/72	6/4/72	7
GrimesConsol	4/11/72	4/20/72	1
Dashew Bus	4/13/72	4/26/72	2
Cogar Corp.	4/17/72	8/14/72	12
Int.Prof.Col	4/19/72	4/28/72	1
Fla.D&M Co.	4/26/72	5/5/72	1
HollywoodInt	4/28/72	5/7/72	1
Inter-Isl.Mt	5/5/72	7/28/72	9
1st WorldCrp	5/10/72	5/4/73	36
Bevis Indus.	5/15/72	5/31/72	2
GraphicScan	5/19/72	5/23/72	1
LDS Dent.Sup	5/31/72	11/16/72	17
Clinton Oil	6/1/72	5/26/73	36
Levits Furn.	6/1/72	6/5/72	1
Accurate	6/29/72	8/8/73	40
Illus.WldEnc	7/14/72	7/28/72	2
4 Seasons Eq	7/17/72	7/26/72	1
4 SeasonsNrs	7/17/72	7/26/72	1
CommuniCyber	7/19/72	7/28/72	1
N.Am.Plan'g.	7/24/72	11/20/72	12
Duesenberg	7/26/72	9/3/72	4
LeisureConc.	7/26/72	10/3/72	7
Comp.Micro.	8/3/72	8/28/72	3
Dalto Electr	8/10/72	8/19/72	1
Fibrothane	8/17/72	9/15/72	3
Academic	8/21/72	8/30/72	1
Canusa Hold.	8/21/72	8/30/72	1
Dashew Bus.	8/30/72	9/8/72	1
MinuteApprvd	9/1/72	2/7/73	16
A-V Electr.	9/13/72	9/22/72	1
EMF Fin.Corp	9/25/72	10/4/72	1
Oceanography	9/27/72	10/31/72	4
PowerConvers	10/6/72	2/16/73	13
Goodway, Inc.	10/10/72	7/16/73	28

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Year 1972

Company	Susp. Commenced	Susp. Term.	Duration
Chrystalogra	10/11/72	5/18/73	22
Mktg.Commun.	10/17/72	11/14/72	3
Camin Indus.	11/1/72	11/9/72	1
Compudat.Sci	11/1/72	11/10/72	1
Allstate Inv	11/22/72	12/1/72	1
Int.Cont.Crp	11/27/72	11/30/72	1
DCS Finan.	11/29/72	3/28/73	12
NovaEquity	12/4/72	3/13/73	10
Major D Corp	12/6/72	12/15/72	1
Mgmt.Dynamic	12/8/72	3/21/73	11

Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Lilac Time	1/5/73	4/24/73	11
AVM Corp.	1/10/73	1/28/73	2
Spence&Green	1/12/73	1/21/73	1
Pelorex Corp	1/16/73	9/2/73	23
Marcon Elec.	1/23/73	2/1/73	1
Super.Comput	1/24/73	2/2/73	1
RoyalAirline	1/30/73	2/8/73	1
Charter Oil	2/1/73	2/10/73	1
Design-a-Phn	2/1/73	2/10/73	1
Met Sports	2/1/73	2/10/73	1
VTR, Inc.	2/1/73	2/10/73	1
Pac.Am.Oil	2/2/73	2/11/72	1
Grt.No., Inc	2/6/73	2/15/76	1
TexturedProd	2/13/73	2/22/73	1
LogosDev.Co.	2/14/73	7/3/73	15
AFCOA	2/20/73	3/1/73	1
ParadoxProd.	2/20/73	3/1/73	1
Lib.Inv.Life	2/23/73	3/4/73	1
VetcoOffshore	3/1/73	3/6/73	1
Benef.Labs	3/5/73	10/30/73	24
Proof Lock	3/5/73	7/12/73	13
Indecon, Inc.	3/5/73	3/14/73	1
Aadan Corp.	3/19/73	8/5/73	14
Charnita Inc.	3/21/73	3/30/73	1
LocatingDev.	3/22/73	3/31/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Photon, Inc.	3/26/73	7/23/73	12
TexturedProd	3/26/73	8/22/73	15
Bolton Grp	3/28/73	4/6/73	1
Eq.Fdg.Corp.	3/28/73	not given	?
EKG Svcs.Inc	3/28/73	4/6/73	1
Indus.Int'l	3/28/73	not given	?
TransbancDep	3/28/73	4/6/73	1
Orecraft,Inc	4/4/73	9/1/73	15
Albros Ind.	4/13/73	4/22/73	1
Elec.Concept	4/13/73	5/22/73	4
Trionics Eng	4/17/73	10/13/73	18
Administra.	4/26/73	5/5/73	1
Belair Fin.	4/26/73	5/5/73	1
Cosmos Indus	4/26/73	5/5/73	1
Custer Chan.	4/26/73	5/5/73	1
Ga.Factors	4/26/73	5/5/73	1
Jeff.Nat.Eq.	4/26/73	5/5/73	1
Std.Motels	4/26/73	5/5/73	1
Taco King	4/26/73	5/5/73	1
Transvac Inc	4/26/73	5/5/73	1
GiantStores	4/27/73	1/1/74	24
IFC Collat.	5/1/73	5/10/73	1
Inv.Fdg.Corp	5/1 73	5/10/73	1
Grt.Lks.Medi	5/2/73	5/11/73	1
Am.Land Co.	5/7/73	5/16/73	1
Appl.Synth.	5/7/73	5/16/73	1
Automa.Sci.	5/7/73	5/16/73	1
Dalto Elec.	5/7/73	5/16/73	1
Gourdine Sys	5/7/73	5/16/73	1
Ill.Cap.Inv.	5/7/73	5/16/73	1
Inland Systm	5/7/73	5/16/73	1
PennTechCorp	5/7/73	5/16/73	1
Pyramid Comm	5/7/73	5/16/73	1
Sci.Inciner.	5/7/73	5/16/73	1
Scotco Data	5/7/73	5/16/73	1
Mackey'sJer.	5/10/73	8/27/73	11
Air Calif.	5/11/73	6/19/73	4
Arlan's Dept	5/11/73	6/9/73	4
Applied Dev.	5/15/73 sic	5/14/73	1
Brown's Limo	5/15/73	5/24/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Henry'sDrive	5/15/73	5/24/73	1
PickwickOrgn	5/15/73	5/24/73	1
Cancer Detec	5/17/73	5/26/73	1
DeliciasIntl	5/17/73	5/16/73	?
Old TownCorp	5/22/73	6/10/73	2
Sav-On Inc	5/23/73	6/1/73	1
Volume Merch	5/23/73	6/1/73	1
BBI Inc.	5/24/73	not given	?
1st Home Inv	6/1/73	6/10/73	1
Pacer Corp	6/1/73	8/19/73	8
Cons.Med.Ind	6/4/73	6/13/73	1
N.Am.Resourc	6/4/73	6/13/73	1
Cstl.St.GasC	6/5/73	9/26/73	12
JB&T Co.	6/8/73	6/17/73	1
Royal Props.	6/8/73	6/17/73	1
Develco, Inc	6/12/73	6/21/73	1
Input Inc	6/12/73	6/21/73	1
SportsWldCom	6/12/73	6/21/73	1
Supreme Oil	6/12/73	6/21/73	1
TMA Co.	6/12/73	6/21/73	1
Nat.Env.Corp	6/13/73	6/22/73	1
Nat.Inst.Bet	6/13/73	6/22/73	1
ParagonSecur	6/13/73	8/11/73	1
Sandia Intl	6/13/73	6/22/73	1
Seaferro Inc	6/13/73	6/22/73	1
Quad Metals	6/14/73	6/23/73	1
Quote Co.Am.	6/14/73	6/23/73	1
Land&Leisure	6/18/73	6/27/73	1
Apollo Ind.	6/22/73	7/1/73	1
CEC Corp.	6/22/73	7/1/73	1
Crown Drug	6/22/73	7/1/73	1
ElCaminoFin.	6/22/73	7/1/73	1
Fly'g.Diamon	6/22/73	7/1/73	1
MonmouthInd.	6/22/73	7/1/73	1
PMC-Pow.Met	6/22/73	7/1/73	1
Royal Props.	6/22/73	not given	?
Ecom-Systems	6/25/73	7/4/73	1
Gen'lGilbert	6/25/73	7/4/73	1
ComprHealth	6/26/73	7/5/73	1
Horizon Ind	6/26/73	7/5/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Int.Dev.Corp	6/26/73	7/5/73	1
Secur.of Am.	6/26/73	7/5/73	1
Avia.Hold.Co.	6/28/73	7/7/73	1
GlenExplora.	6/28/73	7/7/73	1
IntAssemblix	6/28/73	7/7/73	1
Philpot R.D.	6/28/73	7/7/73	1
Pace Indus.	6/28/73	7/7/73	1
Scient.Contr	6/28/73	7/7/73	1
Silv.Reef	6/28/73	7/7/73	1
Grt.Repub.Fi	6/29/73	7/8/73	1
Royal Atlas	6/29/73	7/8/73	1
ChrisMcGuire	7/2/73	7/11/73	1
Aztzec Prod.	7/3/73	11/9/73	10
DatamediaInt	7/5/73	7/14/73	1
Jeff.Nat.Tr.	7/5/73	7/14/73	1
Malaker Corp	7/5/73	7/14/73	1
Nat.Filtron.	7/5/73	7/14/73	1
BISI Inc.	7/6/73	7/15/73	1
Display.Sci.	7/6/73	7/15/73	1
Hetra Comput	7/6/73	7/15/73	1
MultitechInc	7/6/73	7/15/73	1
Progres.Nat.	7/6/73	7/15/73	1
Int.Syst.Ass	7/11/73	7/20/73	1
Atreo Mfg.	7/12/73	7/21/73	1
Credit Syst.	7/12/73	7/21/73	1
Data Pacific	7/12/73	7/21/73	1
Medichek Inc	7/12/73	7/21/73	1
Tycodyne Ind	7/12/73	7/21/73	1
Telectro-Mek	7/16/73	7/25/73	1
JohnnyUnitas	7/18/73	7/27/73	1
Radioptics	7/18/73	7/27/73	1
Am.Home Ind.	7/19/73	7/28/73	1
OffshoreSea	7/19/73	7/28/73	1
Gen'lShelter	7/20/73	7/29/73	1
Program.Sci.	7/20/73	7/29/73	1
RidgeBio-Lab	7/24/73	8/2/73	1
Test Corp.	7/24/73	8/2/73	1
DekcraftCorp	7/25/73	8/3/73	1
Di-anControl	7/26/73	8/4/73	1
Fed.Franchss	7/26/73	8/4/83	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Lyntex Corp.	7/26/73	8/4/73	1
M ch.Enterpr	7/26/73	8/4/73	1
I.D.Prec.Crp	7/31/73	8/9/73	1
Seggos Indus	7/31/73	8/9/73	1
Syner Data	7/31/73	8/9/73	1
Am.Beaut.Cit	8/1/73	8/10/73	1
Fed.Hydronic	8/1/73	8/10/73	1
PlayersGroup	8/1/73	8/10/73	1
Avtek Corp.	8/2/73	8/11/73	1
Coditron Crp	8/2/73	8/11/73	1
DiapulseCorp	8/3/73	8/12/73	1
Env.Svcs.Inc	8/3/73	8/12/73	1
Hi-plainsEnt	8/3/73	8/12/73	1
IMC Int'lInc	8/3/73	8/12/73	1
Intst.Comput	8/3/73	8/12/73	1
C.Sts.G.Prod	8/8/73	9/26/73	5
Colo.Intst.	8/8/73	9/26/73	5
Home-StakePr	8/8/73	5/17/74	28
Kent Ind.	8/8/73	8/17/73	1
Korakorp Ind	8/8/73	1/24/74	17
MSI Corp.	8/8/73	8/17/73	1
Silver Explr	8/8/73	8/17/73	1
Vahlsing,Inc	8/13/73	8/22/73	1
CIC Indus.	8/14/73	9/26/73	5
Collins Rad	8/16/73	8/22/73	1
PetroSilver	8/23/73	9/1/73	1
Compusamp	9/4/73	9/13/73	1
Stratton Grp	9/7/73	7/26/74	32
Teleprompter	9/7/73	11/11/73	7
Diver.Earth	9/12/73	10/1/73	2
Faim Info.	9/12/73	9/21/73	1
Fr.Hubinger	9/12/73	9/21/73	1
N.Am.BldgTch	9/12/73	9/21/73	1
Co-Build Cos	9/18/73	9/27/73	1
Aberle Ind.	9/19/73	9/28/73	1
Appl.Fluidic	9/19/73	9/28/73	1
Sanita Svc	9/24/73	12/2/73	7
Cons.Med.Ind.	9/27/73	10/6/73	1
Eldredge&Co.	9/27/73	10/6/73	1
Grtr.Contin.	9/27/73	10/6/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Airtronics	9/28/73	10/7/73	1
Allied Mgmt.	9/28/73	10/7/73	1
HanleyConsol	10/3/73	10/12/73	1
LangisSilver	10/3/73	10/12/73	1
Omni-RX Hlth	10/5/73	10/14/73	1
Penn.LifeCo.	10/10/73	10/25/73	2
Globa, Inc.	10/11/73	10/20/73	1
Hydroplex	10/11/73	10/20/73	1
Torginal Ind	10/11/73	10/20/73	1
Nat.Health	10/12/73	10/21/73	1
Suitomat Crp	10/16/73	10/25/73	1
Techn.Resour	10/18/73	10/27/73	1
Autobale Am.	10/24/73	11/12/73	2
Fairfld Genl.	10/31/73	11/9/73	1
Tith Alumin.	11/6/73	11/15/73	1
Omega Alpha	11/7/73	1/15/74	7
Std.Systems	11/8/73	11/17/73	1
Tech.Resour.	11/8/73	5/26/74	20
I.E.A.Corp.	11/13/73	11/22/73	1
StanndcoDev.	11/13/73	12/12/73	3
Brogan Assoc	11/20/73	11/29/73	1
Mediatrics	11/20/73	11/29/73	1
PattersonCrp	11/21/73	4/13/74	14
Sayre&Fisher	11/21/73	11/30/73	1
Acme Missile	11/27/73	12/6/73	1
AFM Holding	11/27/73	12/6/73	1
Duesenberg	11/27/73	12/6/73	1
Seaboard Am	11/28/73	4/6/74	13
Can.Javelin	11/29/73	1/12/75	41
Agard Elec.	12/4/73	12/13/73	1
AIM Co.'s.	12/4/73	12/13/73	1
ABC Frt.	12/4/73	12/13/73	1
Arteo Corp.	12/4/73	12/13/73	1
Mtn.Equities	12/4/73	12/13/73	1
OptronicsSys	12/4/73	12/13/73	1
Quotamation	12/4/73	12/13/73	1
Sibany Mfg.	12/4/73	12/13/73	1
Tilco, Inc.	12/4/73	12/13/73	1
Advance	12/11/73	12/20/73	1
Atek Ind.	12/11/73	12/20/73	1

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Year 1973

Company	Susp. Commenced	Susp. Term.	Duration
Reclama.Sys.	12/11/73	12/20/73	1
I.S.IndusLtd	12/12/73	12/21/73	1
Purif.System	12/12/73	12/21/73	1
Parkview-Gem	12/13/73	12/22/73	1
PhotoMagn.Sys	12/18/73	12/27/73	1
PetrolDev.Cp	12/18/73	12/27/73	1
TelecheckInt	12/18/73	12/27/73	1
Go Publ.Co.,	12/19/73	12/28/73	1
Mod.Dynamics	12/19/73	12/28/73	1
PortafoneCrp	12/21/73	12/30/73	1
Sports Intl	12/21/73	12/30/73	1

Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Airac	1/3/74	1/12/74	1
Ecol.DevCorp	1/3/74	1/12/74	1
Hoffman Nwrk	1/3/74	1/12/74	1
Ins.Ind.Inc	1/3/74	1/12/74	1
ITI Electr.	1/3/74	1/12/74	1
My Toy Co.	1/3/74	1/12/74	1
TransNatlCom	1/3/74	1/12/74	1
Botar Group	1/8/74	1/27/74	2
Philipsborn	1/9/74	1/18/74	1
FultonNtlGrp	1/18/74	1/27/74	1
Drew Nat'l.	1/24/74	2/2/74	1
Land&Leisure	1/24/74	2/2/74	1
Nat.Comp.Svc	1/24/74	2/2/74	1
Personnel Cor	1/25/74	2/3/74	1
Assoc.Intl.	1/30/74	2/8/74	1
HollowayWest	1/30/74	2/8/74	1
Silver Gull	1/30/74	2/8/74	1
Silv.Gl.Oil	1/30/74	2/8/74	1
TR-3 Intl.	1/30/74	2/8/74	1
NatlAlfalfa	2/5/74	5/1/74	9
Repub.N.LIns	2/7/74	4/7/74	6
Arboreal As.	2/11/74	2/20/74	1
Albee Homes	2/12/74	2/21/74	1
B.G.I. Corp.	2/12/74	2/21/74	1
Granby MngCo	2/20/74	3/20/74	3

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Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Gamma Proces	2/21/74	3/2/74	1
Harvest Mkts	2/21/74	3/2/74	1
Lamp Fashion	2/21/74	3/2/74	1
Manati Indus	2/21/74	3/2/74	1
Applied Dev.	2/26/74	3/7/74	1
Bldg.Systems	2/26/74	3/7/74	1
Electrogasdy	2/26/74	3/7/74	1
Capezio etc	2/27/74	3/8/74	1
Ecology Inc	2/27/74	3/8/74	1
Franklin Ind	2/27/74	3/8/74	1
Harvey Walt.	2/27/74	3/8/74	1
Laser Sci.	2/27/74	3/8/74	1
CM Indus.	2/28/74	3/9/74	1
CrossCtryInd	2/28/74	3/9/74	1
CusterChan'l	2/28/74	3/9/74	1
Decair Corp	2/28/74	3/9/74	1
Gail Roberts	2/28/74	3/9/74	1
Geon Industr	3/1/74	4/29/74	6
Silenus Corp	3/2/74	3/30/74	3
Brinco, Ltd.	3/11/74	4/7/74	3
Electrospace	3/12/74	4/20/74	4
Am.Data Svc	3/21/74	3/30/74	1
Somatronics	4/10/74	4/19/74	1
AllSt.Credit	4/11/74	4/20/74	1
Beck Indus.	4/11/74	4/20/74	1
Brian Lloyd	4/11/74	4/20/74	1
Cambr.Nucl.	4/11/74	4/20/74	1
Cassette	4/11/74	4/20/74	1
Compuguide	4/11/74	4/20/74	1
Data Indus.	4/11/74	4/20/74	1
Datatronics	4/11/74	4/20/74	1
Dextra Corp.	5/11/74	4/20/74	1
Dialscan Sys	4/11/74	4/20/74	1
Diversa, Inc	4/11/74	4/20/74	1
Dumont Corp.	4/11/74	4/20/74	1
Durst, SF&Co	4/11/74	4/20/74	1
Ebinger Bakg	4/11/74	4/20/74	1
EFG Comp.Sve	4/11/74	4/20/74	1
Empire Intl.	4/11/74	4/20/74	1
Env.Dynamics	4/11/74	4/20/74	1

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Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Fall R.Indus	4/11/74	4/20/74	1
GoodwayCopy	4/11/74	4/20/74	1
GuentherSyst	4/11/74	4/20/74	1
Heidler Corp	4/11/74	4/20/74	1
HemispherHo	4/11/74	4/20/74	1
HydroSkiIntl	4/11/74	4/20/74	1
Int.Hydrolns	4/11/74	4/20/74	1
Juness Indus	4/11/74	4/20/74	1
Kennedy Sp.	4/11/74	4/20/74	1
Life of Ky.	4/11/74	4/20/74	1
Mega Systems	4/11/74	4/20/74	1
Metromodular	4/11/74	4/20/74	1
Nat.R.T.Corp	4/11/74	4/20/74	1
Nat.Identif.	4/11/74	4/20/74	1
Nat.Radio Co	4/11/74	4/20/74	1
Photasystems	4/11/74	4/20/74	1
R.T.NatlCorp	4/11/74	4/20/74	1
Ram ToolCorp	4/11/74	4/20/74	1
RepublicColr	4/11/74	4/20/74	1
Sawyer-Adeco	4/11/74	4/20/74	1
ScooperDoopr	4/11/74	4/30/74	2
S.F. DurstCo	4/11/74	4/20/74	1
SheffldWatch	4/11/74	4/20/74	1
Shore-Calnev	4/11/74	4/20/74	1
Site-Pac	4/11/74	4/20/74	1
Ski Park Cit	4/11/74	4/20/74	1
SpencerKenne	4/11/74	4/20/74	1
Spokane Natl	4/11/74	4/20/74	1
Symmar Inc.	4/11/74	4/20/74	1
Telectronics	4/11/74	4/20/74	1
Textronics	4/11/74	4/20/74	1
Std.LifeCorp	4/25/74	5/4/74	1
ET&T Leasing	4/30/74	5/9/74	1
Servisco	5/6/74	5/15/74	1
Allied Eq.	5/7/74	5/16/74	1
Caled.Silver	5/7/74	5/16/74	1
Gold,Judith	5/7/74	5/16/74	1
Lookout Mtn.	5/7/74	5/16/74	1
NancyLeeMine	5/7/74	5/16/74	1
New EraMines	5/7/74	5/16/74	1

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Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Silver Bowl	5/7/74	5/16/74	1
SignalSilver	5/7/74	5/16/74	1
SovereignInd	5/7/74	5/16/74	1
Am.Exp.Ind.	5/8/74	5/17/74	1
Am.Exp.Lines	5/8/74	5/17/74	1
Cook Indus.	5/8/74	5/9/74	1
Cook Treadwl	5/8/74	5/17/74	1
Apollo Ind.	5/10/74	5/19/74	1
FranklinN.Bk	5/13/74 pref.	10/31/74	17
Frkln NYCorp	5/13/74 com&pr	10/31/74	17
Anita Lynn	5/14/74	5/23/74	1
Environonics	5/14/74	5/23/74	1
Std.Dredging	5/14/74	5/23/74	1
FranklnN.Bk.	5/16/74 debent	10/31/74	17
Frkln NYCorp	5/16/74 notes	10/31/74	17
Cook Treadwl	5/18/74	5/27/74	1
Cont.Dynamic	5/22/74	5/31/74	1
GlfSo.MtgeIn	5/31/74	6/9/74	1
Libco Corp.	6/6/74	6/15/74	1
1st Wis.Mtge	6/13/74	6/22/74	1
Sportworld	6/14/74	6/23/74	1
Fisco, Inc.	6/17/74	6/26/74	1
Nicoa Corp.	6/18/74	not given	?
MonarchGen'l	6/20/74	6/29/74	1
Cmwlth.N.R.T.	6/25/74	7/14/74	2
Fanfare Corp	6/25/74	7/4/74	1
Texon Energy	6/26/74	7/5/74	1
Hershberger	7/2/74	7/11/74	1
Am.Variety	7/3/74	7/12/74	1
Prairie Petr	7/3/74	7/12/74	1
GoldfieldMns	7/17/74	7/26/74	1
Int.Chem.Dev	7/26/74	8/4/74	1
Int.Scan.Dev	7/26/74	8/4/74	1
Am.All-Serv	7/30/74	8/8/74	1
Arthritis	8/6/74	8/15/74	1
Leader Intl	8/13/74	8/22/74	1
Transogram	8/13/74	8/22/74	1
Cont.Resourc	8/14/74	8/23/74	1
Korn/Perry	8/14/74	8/23/74	1
OpenRoadInd.	8/29/74	9/7/74	1

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Year 1974

Company	Susp. Commenced	Susp. Term.	Duration
Savoy Indus.	9/3/74	11/25/74	8
NaturizerInc	9/10/74	9/19/74	1
Avis, Inc.	10/1/74	10/16/74	2
Atl.Indus.	10/2/74	10/11/74	1
Bio-Med.Sci.	10/11/74	not given	?
Amcourt Sys.	10/31/74	11/9/74	1
GrtrWashInv.	11/7/74	12/26/74	5
Aero Resourc	11/13/74	11/22/74	1
Avien, Inc.	11/13/74	11/22/74	1
Car.Carib.	11/13/74	11/22/74	1
D.C.Transit	11/13/74	11/22/74	1
I-T-E Imper.	11/15/74	12/12/74	1
AT&T	11/20/74	11/21/74	1
Betta Ortho.	11/21/74	11/30/74	1
Harvard Ind.	11/27/74	12/6/74	1
Osterloh&D.	12/10/74	12/19/74	1
Iberia Intl.	12/12/74	12/21/74	1
Okuraya/Dav.	12/12/74	12/21/74	1
SossinSystem	12/12/74	12/21/74	1
Data Lease	12/19/74	12/28/74	1
DisposableRe	12/19/74	2/28/74	1
Potter Instr	12/19/74	12/28/74	1
Stelber Ind	12/19/74	12/28/74	1

Year 1975

Company	Susp. Commenced	Susp. Term.	Duration
Am.Agronomic	1/3/75	not given	?
Burman Oil	1/3/75	not given	?
Can.Javelin	1/13/75	1/22/75	1

Certificate of Service

The undersigned, being a member of the Bar of the Supreme Court of the United States, hereby certifies that on the day of January, 1978, he caused to be personally served upon the Solicitor General of the United States, counsel for Petitioner, and upon Samuel H. Sloan, Respondent *pro se*, three (3) copies each of foregoing brief *amicus curiae*.

Dated: New York, New York
January 31, 1978

.....
Reginald Leo Duff
Attorney for the *Amicus Curiae*
Canadian Javelin Limited